

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.6937 of 2016
Date of Decision:8.9.2017**

Mahesh Gupta alias Dimple

...Petitioner

Versus

Harpreet Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Deepak Gupta, Advocate for the petitioner.
Mr.Kanwaljeet Singh, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant civil revision petition, filed under Article 227 of the Constitution of India, at the hands of defendant, is directed against the order dated 9.8.2016 passed by the learned trial court, whereby defence of the petitioner was struck off.

Notice of motion was issued.

Heard learned counsel for the parties.

A bare perusal of the impugned order would show that it is a totally non-speaking and cryptic order. The learned trial Court did not even record as to how much more time was utilised by the defendant beyond 90 days and he could not file any written statement, without any justified reason. The learned trial Court, in the circumstances of the case, ought to have exercised its discretion in favour of the defendant-petitioner, granting him at least one more opportunity to file his written statement. The learned

trial Court could have put the defendant-petitioner to terms that in case he would not file any written statement on or before the next date of hearing, his defence would be struck off. Since the learned trial court failed to exercise its discretion, which ought to have been exercised, a manifest injustice has been caused to the petitioner, while striking off his defence by passing the impugned order. Having said that, this Court feels no hesitation to conclude that since the impugned order has been found suffering from patent illegality, it cannot be sustained.

It is the settled principle of law that rules of procedure are meant for advancing the cause of justice. Every court of law must make an endeavour to grant reasonable opportunities to both the parties to put up their best case before the court. Since the learned trial court could not appreciate this material aspect of the matter, while passing the impugned order, a manifest injustice has been caused to the petitioner-defendant.

During the courser of hearing, learned counsel for the respondent could not raise any meaningful argument in support of the impugned order and rightly so, it being a matter of record, because no such argument was available to him. In fact, the impugned order has been found suffering from a patent illegality, as the same is running counter to the undisputed facts of the case because of which the impugned order is liable to be set aside, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 9.8.2016 is hereby set aside.

The petitioner-defendant shall be granted one more opportunity to file his written statement on or before the next date of hearing and thereafter, the learned trial court shall proceed further with the matter and decide the suit, in accordance with law.

Resultantly, with the above-said observations made and directions issued, the present civil revision petition stands allowed, however, with no order as to costs.

8.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No