

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4432 of 2018
Date of decision: 16.07.2018

Karnail Singh Petitioner

Versus

Kulwinder Kaur Respondent

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Anil Kumar Garg, Advocate for the petitioner.

B.S. Walia, J. (Oral)

[1] Challenge in this revision petition under Article 227 of the Constitution of India is to order dated 28.05.2018 (Annexure P-2) passed by the learned Civil Judge (Junior Division), Payal striking off the defence of the petitioner/defendant by denying him the right to file written statement. Prayer is for setting aside the impugned order and for being allowed to file written statement.

[2] Civil suit was filed on 18.05.2015 by the respondent/plaintiff against her 80 years old father, who is petitioner herein seeking permanent injunction restraining him or his agents, servants, associates or attorneys from alienating or causing to alienate and creating any sort of charge and mortgaging and from changing the existing position/nature of land measuring 11 kanals, 8 marlas comprised in Khata No.206/239, Rect. No.26, Killa No.12 (7-2), 13/1 (1-12), 19/2 (6-8), 20/1 (4-0), 21 (8-0), 22/1 (3-4), Rect. No.33, Killa No. 1 (8-0), 10 (7-16), 11/1 (4-15) as per Jamabandi for the year 2009-10 situated within the revenue estate of Village Raul, Tehsil

Payal, District Ludhiana on the basis of oral and documentary evidence. Subsequently, an application was moved for amendment of the aforementioned civil suit so as to incorporate a prayer for possession of aforesaid land by way of specific performance of agreement to sell dated 11.12.2015. The amendment was allowed vide order dated 04.05.2017 (Annexure P-3) and the case was adjourned for filing amended plaint to 08.07.2017, thereafter to 11.08.2017 and 14.12.2017. However, amended plaint was not filed on the said dates and was filed on 16.12.2017.

[4] On amended plaint being filed after availing numerous opportunities, the case was adjourned to 12.01.2018 for filing of written statement to the amended plaint. However, on said date, on request of learned counsel, the case was adjourned to 16.02.2018. Again on said date, on request of counsel for the petitioner/defendant, case was adjourned to 16.03.2018 for filing written statement and on 16.03.2018, on request, it was adjourned to 06.04.2018 for filing written statement subject to last opportunity. However, the case was taken up on 05.04.2018 by the learned Civil Judge (Junior Division), Payal and adjourned to 07.05.2018 for filing written statement subject to last opportunity since, on 06.04.2018 he was to be on leave. Thereafter, since the Civil Judge (Junior Division), Payal was to be on leave on 07.05.2018, case was taken up on 05.05.2018 and adjourned to 28.05.2018 for purpose already fixed. On 28.05.2018, the impugned order was passed by recording that despite last opportunity and imposition of costs, neither costs had been paid nor written statement had been filed nor justifiable explanation advanced by the counsel for the petitioner/defendant for not filing written statement.

[5] Learned counsel contends that in view of the age of the petitioner/ defendant who is 80 years old and the suit having been filed by

the respondent/plaintiff against her old father i.e. petitioner/defendant; besides, it having been wrongly recorded by the learned Civil Judge (Junior Division), Payal that costs had not been paid, as no costs had been imposed, petitioner having given all material to the counsel but the counsel not having done the needful, one opportunity be granted to the petitioner/defendant for filing the written statement subject to such conditions as deemed appropriate by this Court.

[6] It needs mention here that although the written statement ought to have been filed within period of 90 days, yet as per law laid down by Hon'ble the Supreme Court in **Shaik Salim Haji Abdul Khayamsab v. Kumar and others**, 2005 (4) RCR (Civil) 823; 2006 (1) SCC 46, Order 8 Rule 1 CPC is not mandatory but directory and filing of written statement can be permitted beyond the period of 90 days if sufficient cause is shown.

[7] No doubt in the present case, written statement was not filed to the amended plaint despite opportunities/last opportunity having been granted, yet taking into account the age of the petitioner i.e. 80 years old as also the fact that the civil suit was filed by the respondent/plaintiff-daughter against her father i.e. petitioner/defendant, initially for permanent injunction which was subsequently got amended for incorporating the plea for specific performance, I deem it appropriate to allow the instant revision petition by setting aside the impugned order and granting one opportunity to the petitioner/defendant to file written statement to the amended plaint subject to deposit of ₹ 5000/- as costs with the Lawyers' Welfare Fund in Tehsil Payal within two weeks from today. It is made clear that the filing of the written statement to the amended plaint would be subject to deposit of costs and in case of non-deposit of costs, in the manner as indicated above, written statement to the amended plaint shall not be taken on record. The revision

petition is being allowed without issuing notice since issuance of notice would entail delay of proceedings, besides, would result in unnecessary expenditure being incurred by the respondent.

[8] Accordingly, the revision petition is allowed in the aforementioned terms.

(B.S. Walia)
Judge

16.07.2018
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No