

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-478-2019 (O&M)

Date of decision: 25.09.2019

Arjun Chawla

...Petitioner

Versus

Virender Chawla and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Arjun Chawla, petitioner in person.

Mr. Ajay Jain and Mr. Vansh Chawla, Advocates
for respondent Nos. 1 & 2.

H.S. MADAAN, J.

This revision petition is directed against order dated 01.11.2018, passed by Civil Judge (Jr. Divn.), Ambala, vide which, an application filed by the plaintiff/revisionist Arjun Chawla for not taking on record the written statement filed by defendants in the month of October 2017, beyond stipulated period in civil suit titled 'Neha Chawla and Anr. Vs. Virender Chawla and Ors.' had been dismissed.

Inter alia, in the application, applicant/plaintiff No.2 contended that the plaintiff had filed the suit on 04.05.2015, whereas, defendants had filed the written statement after 2 years 05 months and 06 days on 10.10.2017, though, they were legally bound to file it within 30 days from the date they were served. They could have filed it within 90 days for special reasons to be recorded by the Court and beyond 90 days, the written statement could not be filed. Therefore, the written statement

so submitted by the defendants be not entertained.

That application was contested by the defendants, contending that earlier a similar application was filed by the plaintiff No.1-mother of plaintiff No.2, which was withdrawn by her and both the plaintiffs have been filing frivolous applications to prolong the proceedings. The plaintiffs had filed an application seeking leave to file replication without raising any protest with regard to the delay in filing of the written statement, thereby showing acquiescence. As such, plaintiff No.2 was estopped by his act and conduct from filing the application. According to the defendants, defendant No.1 had appeared in the trial Court on receipt of summons and thereafter, written statement was required to be filed. The plaintiffs have been filing various suits against the defendants concealing the filing of earlier suits. The matter had gone upto the High Court. Defendant Nos.1 & 2 in order to file proper and effective written statement had to collect the relevant papers of the said civil suit from their counsel in the High Court and only, thereafter, they could get the written statement drafted and file it in the Court. They prayed for dismissal of the application.

After hearing arguments, the trial Court dismissed the application with following observations:-

“4. Having heard the respective contentions of the ld. Counsel for the parties and having perused the case file very carefully, the court is of considered view that perusal of case file reveals that suit was instituted on 04.05.2015 and memo of appearance was filed on behalf of defendants no.1 & 2 on 14.07.2015 upon their service and on 01.07.2016, an application

was moved on behalf of defendants no.1 & 2 for production of various documents submitting therein that proper written statement could not be filed without these documents and thereafter, on 30.11.2016 reply was filed by the plaintiffs and on 05.07.2017, ld. Counsel for defendants withdrew his application as he received the documents and thereafter, written statement and reply to injunction application was filed on 10.10.2017. It is well settled that the procedural law is hand made of justice and cannot be interpreted just to defeat the ends of justice. Moreover, no prejudice would be caused to the plaintiffs as the written statement of defendants is already on file and the case is already fixed for evidence of plaintiffs and the present suit would be decided on merits after hearing the parties to the suit. Hence, application at hands stands dismissed.”

This order left the plaintiff No.2 aggrieved and he has filed the present revision petition, notice of which was given to respondents/defendants Nos.1 & 2, who have put in appearance through counsel.

I have heard the revisionist in person as well as learned counsel for respondent Nos. 1 & 2 besides going through the record.

Section 115 of CPC deals with power of revision vesting in the High Court. It provides that the High Court may call for the record of an case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears-

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such

order in the case as it thinks fit.

In that way, such revisional jurisdiction is quite limited. The grouse of the revisionist/plaintiff No.2 is that the written statement has not been filed by the defendants within stipulated period and the trial Court wrongly allowed the defendants to place on file the written statement. However, the trial Court has given proper reasoning for doing so and no fault can be found with the same. As far as the judgments referred to by the revisionist i.e. **Atcom Technologies Ltd. Vs. Y.A. Chunawala and Co. & Ors.** in Civil Appeal No(s) 4266-4267 of 2018 decided on 07.05.2018, **M/s SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastuctuer Pvt. Ltd. & Ors.** in Civil Appeal No.1638-2019 decided on 12.02.2019, **Kailash Vs. Nanhku & Ors.**, in Civil Appeal No.7000 of 2004 decided on 06.04.2005 and **Rajneesh Goyal (since deceased) Vs. Dsj Communications Ltd.** decided on 28.04.2008, those are not helpful to the case of revisionist due to different facts and circumstances and the context in which such observations had been made.

On the other hand, learned counsel for respondent Nos.1 & 2 has also placed reliance upon judgment **Zolba Vs. Keshao and others**, 2008(2) RCR (Civil) 869 by the Apex Court, wherein it was observed that under Order 8 Rule 1 CPC, period of 90 days is fixed for filing written statement but such provision is not mandatory but directory and it is open to Court to allow the defendant to file his written statement if exceptional circumstances have been made out. He has further placed reliance upon

judgment by Jaipur Bench of Hon'ble Rajasthan High Court in a case title

Sh. Laxmi Narayan Sharma Vs. Smt. Rajeshree Khandewal, 2017(1)

RRT 173 in support of their contention.

In this case, as it comes out that the plaintiffs had not raised any objection when the written statement was filed, rather, the plaintiffs had filed an application seeking leave to file replication. Issues on merit have been framed and the case is fixed for evidence. Therefore, the trial Court was justified in dismissing the application. There is no illegality or infirmity in the order, much less apparent on the face of it, which might have called for interference by this Court, while exercising revisional jurisdiction. Thus, finding no merit in the revision petition, the same stands dismissed.

25.09.2019

sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No