

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1424-2021 (O&M)

Date of Decision:02.08.2021

Satish Kumar Saini

....Petitioner

VS

Jasbir Kaur and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Satish Kumar Saini, petitioner in person

SUDHIR MITTAL, J. (Oral)

Respondent No. 1 has filed a suit for declaration to the effect that she is owner of the suit property to the extent of 63.7% and defendant No. 2 – petitioner is the owner to the extent of 36.3 %. Vide order dated 09.02.2017, the defence of defendant No. 2-petitioner was struck off. He sought review of the said order, which has also been dismissed vide order dated 25.02.2020. Thus, the present revision petition has been filed.

A few relevant facts may be noticed. The petitioner put in appearance in the suit on 02.04.2014 and on the same day filed an applicaiton under Order 7 Rule 11 CPC for rejection of the plaint. The said application was rejected by the trial Court vide order dated 11.11.2016. This order was challenged before the High Court by way of a civil revision petition in which proceedings before the trial Court were stayed vide order dated 24.04.2017. The revision petition was, however, ultimately dismissed vide order dated 21.05.2019. Meanwhile, before proceedings were stayed by this Court, defence had been struck off vide order dated 09.02.2017.

From the above, it is evident that defendant No. 2–petitioner put in appearance on 02.04.2014 and has not filed the written statement till date. Defence was struck off vide order dated 09.02.2017 and by then a period of 34 months had elapsed, since the date he had put in appearance.

The petitioner in person has submitted that vide order dated 24.04.2017 stay of further proceedings had been granted by the High Court. The said stay was vacated only on dismissal of the revision petition on 21.05.2019. Thus, he was prevented from filing his written statement.

The argument raised is not acceptable. As noticed hereinabove, defence already stood struck off vide order dated 09.02.2017 and, thus, there is no logic in the argument.

It has next been contended that the application under Order 7 Rule 11 CPC was filed on the day the petitioner put in appearance. The said application was decided only on 11.11.2016 and during its pendency he could not file the written statement.

This argument is also not sustainable in law. Order 7 Rule 11 CPC does not stipulate that an application thereunder must be filed before filing of the written statement. It also does not stipulate that during the pendency of such an application the written statement should not be filed. Consequently, this argument is also rejected.

Next, it has been contended that provisions of Order 8 Rule 1 CPC are not mandatory in nature and, thus, the defence should not have been struck off.

It is true that the said provision is not mandatory in nature, however, this does not imply that a defendant may delay filing of the written statement to any extent. In this case the defence was struck off 34 months after the petitioner

had put in appearance. He has not been able to justify this inordinate delay and, thus, no error can be found in the order of striking off defence.

Finally, it has been submitted that the petitioner may be permitted to file his written statement as he wishes to file a counter claim as well. If that is so, the petitioner should have been vigilant and should have filed the written statement within a reasonable time. The least that could have been done by him was to file a written statement during the pendency of his review application. This has also not been done and, thus, it is evident that defendant No. 2 – petitioner is only interested in delaying the decision of the suit.

Keeping in view the aforementioned facts and circumstances, the trial Court was justified in striking off the defence. The reason for refusal to exercise review jurisdiction also can not be faulted.

Consequently, the revision petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

02.08.2021
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Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No