

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

CR-2157-2021

DECIDED ON: 30th SEPTEMBER, 2021

HDFC BANK LTD.

.....PETITIONER

VERSUS

CANARA BANK AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT.

Present: Mr. Saurabh Bhardwaj, Advocate for the petitioner.

RAJBIR SEHRAWAT, J (ORAL)

The instant petition has been preferred by the petitioner under Article 227 of the Constitution of India seeking setting aside of impugned order dated 24th September, 2018 passed by Additional Civil Judge (Sr. Division), Ferozepur vide which right to file the written statement of the petitioner was struck off and the order dated 12th August, 2021; whereby; the application filed by the petitioner for amendment of its written statement was dismissed.

It has been submitted by the counsel for the petitioner that the petitioner had engaged the counsel to represent him before the trial Court. However, the counsel did not update the petitioner about the proceedings of the case. Later on when the petitioner filed the application for amendment of written statement already filed by the petitioner, then it came to know that the defence of the petitioner had already been struck off vide order dated 24th September, 2018 on account of non-filing of written

To buttress his arguments counsel for the petitioner referred to the fact that; subsequently; written statement was even placed on record without any objection from any side, although same is not made part of record formally. The petitioner even led the evidence to substantiate its case. The petitioner even cross-examined the plaintiff's witnesses. Hence, for all practical purposes; the petitioner has duly participated in the process of adjudication. By way of amendment of the written statement, petitioner only intended to place on record certain documents. However, the application for amendment of written statement has been declined on the ground that the defence of defendant No.2 has already been struck off. Counsel for the petitioner has further submitted that filing of amended written statement would not suffer prejudice to the other side because they would be getting opportunity to rebut the pleadings as well as the evidence to be led by the defendants which has not even started so far.

Notice of motion.

Mr. Anju Arora, Addl. AG, Punjab appearing on advance notice accepts the notice on behalf of respondents No.3 to 5.

In view of the nature of the order intended to be passed by this Court this Court deems it appropriate not to issue notice to the remaining respondents.

Having heard counsel for the petitioner and having perused the case file, it is clear that petitioner was granted sufficient opportunities to file written statement. However, that opportunities were wasted by the petitioner. Although the petitioner has now put forward an excuse that his counsel was not properly intimating the proceedings going on before the trial Court, however, even that may not be the legal ground for the

petitioner to challenge the order passed by the trial Court in this regard. Therefore, this Court does not find any legal error with the impugned order passed by the trial Court, as such, whereby the defence of the petitioner was struck off. However, the procedure and process of the Court is meant to dispense justice to the parties coming to the Court. Therefore, in a situation where the substantial justice and the procedural aspect are the competing factors, the Court has to lean towards the substantial justice. Moreover, the petitioner has already cross-examined the witnesses of the plaintiff, therefore, petitioner is already in defence of the suit filed by the plaintiff-respondent. Hence, it would not be unjustified to grant opportunity to the petitioner to defend the proceedings, however, by putting him to some financial burden.

Qua written statement filed by the petitioner as well, it is obvious that the same is already placed on record though not formally part of the record, as such. The petitioner is now trying to bring on record certain documents by making the same part of the pleadings. It would also not be in the interest of justice to deny such an attempt on the part of the defendant/petitioner, particularly, when the plaintiff can be granted opportunity to rebut the pleadings and the evidence of the defendant-petitioner led in defence.

In view of the above, the impugned orders are set aside. The written statement already filed by the petitioner-defendant is ordered to be made part of the judicial record. Petitioner is permitted to defend the suit as defendant by availing its legal rights. The amendment of written statement is allowed, as prayed for. However, the above orders are subject to payment of Rs.25,000/- as costs, to be deposited with the Institute for

Blind, Sector 26, Chandigarh, within a period of two weeks from today.

The trial Court shall permit the defence and amended written statement of the petitioner to be brought on record on production of the receipt for having the deposited the costs, as ordered above.

Disposed of.

30th SEPTEMBER, 2021
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(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>