

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

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IN VIRTUAL COURT

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**CR No. 2218 of 2021
Date of decision : 7.10.2021**

Kapil Kumar Mathur

.....Petitioner

Vs.

Sarfun Nisha and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Munfaid Khan, dvocate, for the petitioner

Rajbir Sehrawat, J. (Oral)

This is a revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 03.09.2021 (Annexure P-3), passed by the Additional Civil Judge (Senior Division), Nuh, vide which the defence of the petitioner and perform respondents No.4 to 6 was ordered to be struck off and application under Order 11 Rules 1 & 2 CPC (Annexure P-2), filed by the present petitioner, has been dismissed, with a further prayer to grant opportunity to the petitioner for filing written statement and respondents No.1 and 2/plaintiffs be directed to answer the interrogatories mentioned in application under Order 11 Rules 1 & 2 CPC moved by the petitioner in the civil suit.

It is submitted by the counsel for the petitioner that respondents No.1 and 2/plaintiffs had not paid any sale consideration to the petitioner for the land involved in the suit; qua which they have sought declaration to be the owners in possession of the said land. Hence, there had not been any valid transfer of title in their favour. They are intending to use the process of the

Court to acquire the title qua the suit property of the petitioner without there being any payment of consideration. Therefore, to bring the specifics of this aspect to the focus of the adjudication, the petitioner had sought permission from the Court to issue interrogatories to the plaintiffs/respondents No.1 and 2 by moving an application under Order 11 Rules 1 & 2 CPC. Instead of deciding the said application, the defence of the petitioner has been struck off on the ground that the petitioner had not filed the written statement; even after the orders of the Court. It is further submitted that the petitioner is a poor person who has already been defrauded and harassed; therefore, if there had been any untoward conduct of the counsel for the petitioner before the trial Court during the Court proceedings, the petitioner should not be made to suffer for the same. The petitioner had never instructed his counsel to insist before the trial Court that he would not file the written statement till the application filed by the petitioner under Order 11 Rules 1 & 2 CPC, is decided by the trial Court.

Learned counsel for the petitioner has further submitted that since the petitioner has been deprived of the property worth about Rs. 7.5 Crores, without paying any consideration, therefore, it would cause great injustice to the petitioner, if he is deprived of defence in the suit. Therefore, the petitioner craves for indulgence of this Court; so as to grant permission to the petitioner to defend the suit in question.

In view of the nature of the order this Court intends to pass, this Court does not deem it necessary to issue notice to the other side, at this stage.

A perusal of the paper book shows that the suit was filed by the plaintiffs way back in the year 2017. As it has been pointed out by the counsel

for the petitioner, earlier the defendants were proceeded against ex parte. However, they joined the proceedings w.e.f. 16.03.2021 after the ex parte order was set aside. Thereafter, keeping in view the fact that the suit was being unnecessarily delayed, the trial Court had even directed the defendants to file their written statement on or before 06.04.2021. However, that opportunity was not availed by the petitioner. Subsequently the written statement was filed on behalf of defendant No.1 in the suit. However, no written statement was filed on behalf of the other defendants including the petitioner. On the contrary, an application under Order 11 Rules 1 & 2 CPC was filed for seeking leave to send interrogatories to the plaintiffs. Even, during the consideration of this application, the Court had expressed that the petitioner could have reserved his right to press for this application; after filing the written statement. The Court even asked the petitioner to file written statement. However, before the trial Court, the counsel for the petitioner remained adamant and flatly refused to file the written statement. In view of this sequence of facts, the trial Court cannot be held to be at fault in passing the impugned order, as such.

However, on the other aspect that the petitioner should not be made subject to injustice only because of fault of the counsel, this Court finds some substance. Needless to say that law of procedure is handmade to facilitate dispensing substantial justice. If the fiat of substantial justice so demands, the procedural aspects can be put on hold for some time. Hence, this Court finds that although there has been default on the part of the counsel for the petitioner before the Court below, however, it would not be unjustified to grant the petitioner one more opportunity to file written statement, but by putting him under some financial burden.

Accordingly, the present revision petition is disposed of by setting aside the impugned order dated 3.9.2021; and with a further direction to the trial Court to grant one effective opportunity to the petitioner to file his written statement. However, this opportunity is granted to the petitioner, subject to payment of Rs.30,000/- as costs.

Let the costs be deposited with the Institute for Blind, Sector-26, Chandigarh, within a period of 15 days. It is clarified that the trial Court shall grant the above said opportunity to the petitioner on production of receipt of having deposited the costs, as ordered above.

(RAJBIR SEHRAWAT)
JUDGE

7.10.2021
Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No