

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

**CIVIL REVISION No.2236 of 2021
DATE OF DECISION : 5th OCTOBER, 2021**

Didar Singh

.... Petitioner

Versus

Jaspal Kaur & others

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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Present : Mr. T. P. S. Tung, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

This revision petition under Article 227 of the Constitution of India has been filed by the petitioner (defendant No.1) for setting aside order dated 30.10.2019 (Annexure P-1) passed by the Civil Judge (Junior Division), Chandigarh, whereby the defence of the petitioner has been struck off and order dated 31.08.2021 (Annexure P-4) vide which the application under Section 151 C.P.C. filed by the petitioner for recalling the order dated 30.10.219 has been dismissed, along with certain other prayers.

It is submitted by the counsel for the petitioner that although the petitioner was served with the notice qua the proceedings, however, the written statement could not be filed on behalf of the petitioner because he was facing illness at the relevant time. It is further submitted that the petitioner is an Advocate by profession. Even for his

professional work he never appeared in any case during the period for which he defaulted in filing the written statement. Due to his illness, he could not even properly instruct his own counsel in the present case. That resulted in default in filing the written statement before the trial court. However, that default, on the part of the petitioner, was not intentional. The counsel has further submitted that the petitioner be granted one opportunity to file written statement and to defend the suit. To support his prayer, the counsel for the petitioner has pointed out that even the plaintiffs' evidence is yet to start in the matter. Hence, no prejudice would be caused to any person if the written statement is permitted to be filed on behalf of the petitioner.

In view of the nature of the order, which is being passed herein below, this court does not consider it necessary to issue the notice to opposite side, at this stage.

Having heard the counsel for the petitioner and having perused the case file, this court finds that the petitioner was duly served by the trial court for 26.04.2018. However, despite availing many opportunities, the petitioner failed to file the written statement. Even the application for permission to file written statement and for setting aside the order striking off the defence of the petitioner, passed by the trial court was filed only on 17.05.2019, i.e., after more than one year from the date of first appearance of the petitioner before the trial court. Hence, this court does not find anything wrong in the conclusion arrived at by the trial court, as such. However, this court finds some substance in the argument of the counsel for the petitioner qua the fact that the default on the part of the petitioner, in not filing the written statement, was not

purely intentional. Otherwise also, in case the court is to choose between the procedural technicalities and the substantial justice, the court has to lean towards the substantial justice. Hence, it would not be unjustified if the petitioner is granted one opportunity to file the written statement and, further, to defend the suit, however by putting him to some financial burden.

Otherwise also, as is pointed out by the counsel for the petitioner, the evidence in the case is yet to start. Hence, the other party would not be prejudiced if the petitioner is granted opportunity to file written statement. The other side can be granted opportunity by the trial court to rebut the written statement and then to lead the evidence accordingly.

In view of the above, the impugned order (Annexure P-1) passed by the trial court is set aside and the present petition is disposed of with a direction to the court below to grant one effective opportunity to the petitioner to file written statement and, thereafter, to defend the suit accordingly. However, this opportunity is subject to payment of ₹5000/- as cost; to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, within a period of two weeks from today. It is clarified that the trial court shall grant this opportunity to the petitioner only on production of the receipt of having deposited the cost as ordered above.

With the above said directions, the present petition stands disposed of.

5TH JANUARY, 2021
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No