

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

CR-2516-2021(O&M)

Date of decision:-01.11.2021

Gursev Singh Manchanda

...Petitioner

Versus

Mohinder Pal Singh and another

...Respondents

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

Present: Mr.J.S. Santwal, Advocate
for the petitioner.

H.S. MADAAN, J.

1. This revision petition is directed against the order dated 9.9.2021 passed by the Court of Civil Judge (Jr.Divn.), Amritsar vide which she had dismissed an application under Order 8 Rule 1 read with Section 151 CPC moved on behalf of plaintiff Gursev Singh Manchanda, who is revisionist before this Court, for closing the right of Mohinder Singh – defendant in the suit to file written statement and striking off his defence.

2. Briefly stated, the facts of the case are that plaintiff Gursev Singh Manchanda had brought a suit for possession against defendants Mohinder Singh and his brother Jasvinder Singh claiming that he is owner of the suit property, which is in possession of defendants as licensees; that

licence in favour of the defendants has since been revoked, however defendants failed to hand over the possession of the suit property to the plaintiff necessitating the filing of the suit in question.

3. Notice of the suit filed on 31.5.2019 was issued to the defendants. Defendant No.2 did not appear despite service, as such was proceeded against ex parte vide order dated 8.8.2019, whereas defendant No.1 was served and put in appearance through counsel on 5.9.2019, thereafter the case kept being adjourned for filing of written statement, which was not filed up to 29.10.2019. The case was then adjourned to 21.11.2019. In the meanwhile, the plaintiff brought an application under Order 8 Rule 1 read with Section 151 CPC for closing the right of defendant No.1 to file written statement and striking off his defence stating that the written statement, which was required to be filed within 30 days of service of summons, had not been filed within such period or extended permissible time of 90 days, which expired on 18.11.2019. The No.1 had filed an application under Order 7 Rule 14 read with Section 151 CPC contending that while preparing written statement, it has transpired that documents on which the plaintiff relies upon have not delivered with copy of plaint, which are very much necessary to enable the defendant to prepare written statement and plaintiff be directed to supply copies of such documents to defendants.

4. Both the applications were opposed by the opposite side. The trial Court vide order dated 9.9.2021 had dismissed the application under Order 7 Rule 14 CPC and application under Order 8 Rule 1 CPC was also dismissed vide order of the even date.

5. Such order has felt the plaintiff aggrieved and he has brought the present revision petition.

6. I have heard learned counsel for the revisionist besides going through the record and I find that there is no merit in the revision petition and it is bound to fail.

7. To cut short the alarming delay in disposal of the cases, the Legislature in its wisdom has been carrying out various amendments in different enactments including those dealing with the procedural law. Provision of Order 8 Rule 1 CPC was introduced to achieve that purpose. However, it cannot be said that if written statement is not filed within stipulated period of 90 days, then defence of defendant is to be struck off in each and every eventuality. The Court can certainly consider the surrounding circumstances and in suitable cases extend the time for filing of written statement and can accept the written statement filed after period of 90 days, though this is not to be done in routine but in exceptionally hard cases. We have faced extraordinary situation of outbreak of Covid Pandemic. Lakhs of people all over the world have lost their lives due to such pandemic and normal life had come to a halt, though of the late situation is showing signs of improvement. Initially, the functioning of the Courts was hampered to a considerable extent, though slowly the Courts started functioning in restricted mode and it is only recently that we are proceeding towards almost complete normal working. The present case is to be viewed in such situation. Though learned counsel for the revisionist has contended that Covid pandemic had showing alarming signs in March, 2020 only and not prior to that but then it has to be kept in mind that the

pandemic had started in the year 2019 itself and for that reason it is known as Covid-19. Though the gravity of the situation had increased in the beginning of year 2020. It has to be kept in mind that rules of procedure are handmaid of justice. These are meant to advance ends of justice. The Courts are not to get bogged down in technicalities and in the process deviate from the pious duty of dispensing justice. It is always desirable to decide a *lis* on merits after considering the version of contestants, rather than non-suited a litigant for technical reasons and decide a dispute considering version of one side only since there is a danger of deflection from the path of justice in the process.

8. For ready reference, the operative part of the order is being reproduced as under:

5. *That no doubt the defendant No.1 has not filed the written statement within 90 days as mentioned in CPC. But due to the wake of Covid-19 pandemic the courts were working in restrictive manner, which is a sufficient and just cause to allow the defendant no.1 to file his written statement on or before 13.10.2021 failing which cost of Rs.2,000/- be paid to the opposite party i.e. plaintiff. Hence the application under Order 8 Rule 1 read with Section 151 CPC filed by the plaintiff is dismissed.*

9. The trial Court has observed that restricted functioning of Courts on account of outbreak of Covid-19 was a sufficient and just cause to allow defendant No.1 to file written statement on or before 13.10.2021, failing which cost of Rs.2,000/- would be got paid to the opposite party i.e. plaintiff. Thus, the trial Court has been fair to both the parties and has

taken adequate measures now to ensure that written statement is filed at the earliest.

10. I find that the impugned order passed by the Court below is detailed and well reasoned, which does not suffer from any illegality or infirmity and no interference therewith is called for while exercising jurisdiction under Article 227 of the Constitution of India.

11. Thus, finding no merit in the civil revision petition, the same stands dismissed.

01.11.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No