

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.5873 of 2018 (O&M)

Reserved on : 28.10.2022

Date of Decision: 01.11.2022

Vibhor Sharma Kaushal

....Petitioner

VERSUS

Brig. Raj Kapoor Kaushal and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kanishk Arora, Advocate for the petitioner.

Mr. Joginder Singh, Advocate for respondent nos.1 to 5.

Mr. Ashutosh Verma, Advocate for

Mr. Lokesh Sinhal, Advocate for respondent no.6.

ALKA SARIN, J.

The present revision petition under Article 227 of the Constitution of India has been filed assailing the orders dated 04.07.2018 (Annexure P-1) and 31.07.2018 (Annexure P-2) passed by the Trial Court permitting the defendant-respondent nos.1 to 5 to file their written statement beyond the period of 90 days.

Learned counsel for the plaintiff-petitioner would contend that the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 (for short 'CPC') are mandatory in nature and hence, the written statement could not have been allowed to be filed after the expiry of the period of 90 days. In support of his argument, learned counsel for the plaintiff-petitioner has relied upon a judgment of the Bombay High Court in the case of **Prabhakar Madhavrao Mule vs. Bhagwan Mitharam Choudhari [2004 (5) BomCR 568]**.

Per contra learned counsel for the defendant-respondent nos.1 to 5 has relied upon judgments of the Hon'ble Supreme Court in the cases of **Shoraj Singh vs. Charan Singh [2021 (4) PLR 158]**; **Kailash vs. Nanhku & Ors. [2005 (2) RCR (Civil) 379]** and **Bharat Kalra vs. Raj Kishan Chabra [Civil Appeal No.3788 of 2022 arising out of SLP (C) No.63 of 2022 decided on 09.05.2022]**, to contend that the provisions of Order VIII Rule 1 CPC are directory in nature and not mandatory and that the provisions are mandatory only in case of Commercial Courts under the Commercial Courts Act, 2015.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a civil suit for declaration, partition and possession of shares with consequential relief of rendition of accounts and mesne profits and permanent injunction. The defendant-respondent nos.1 to 5 in the present case are the father, uncles and aunts of the plaintiff-petitioner. Notice of the suit was given to the defendant-respondent nos.1 to 5 who put in appearance on 06.12.2017. Thereafter, the matter was adjourned on various dates. An application under Order VII Rule 11 CPC was filed by the defendant-respondent nos.1 to 5 as also applications were filed by the plaintiff-petitioner under Order I Rule 10 CPC and under Order VIII Rule 10 CPC. The case was thereafter again adjourned on various dates and vide the impugned orders the defendant-respondent nos.1 to 5 were permitted to file their written statement. The argument of learned counsel for the plaintiff-petitioner that the provisions of Order VIII Rule 1 CPC are mandatory in nature cannot be accepted in view of the law laid down by the Hon'ble Supreme Court in the cases of **Shoraj Singh** (*supra*), **Kailash** (*supra*) and **Bharat Kalra** (*supra*). It has repeatedly been held by the Hon'ble Supreme Court that the provisions of Order VIII Rule 1 CPC are mandatory only in

the case of Commercial Courts under the Commercial Courts Act, 2015. No doubt, the defendant-respondent nos.1 to 5 have been remiss in filing the written statement, however, denying them the opportunity of filing the written statement would be unreasonable. The Trial Court has exercised its discretion while permitting the defendant-respondent nos.1 to 5 to file their written statement and in view of the law laid down by the Hon'ble Supreme Court holding that the provisions of Order VIII Rule 1 CPC are not mandatory in nature, I do not find any ground to interfere with the impugned orders passed by the Trial Court.

The present revision petition, which is devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

01.11.2022
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO