

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

CR-1514-2022
Decided on : 26.04.2022

Kuldeep Singh

..... Petitioner

Versus

Sarbjeet Kaur and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Bhuvan Bhalla, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Petitioner herein is the defendant before the Court of Civil Judge in a suit for declaration with consequential relief of permanent injunction filed by the respondents herein.

The petitioner is aggrieved by the order dated 10.03.2021 (Annexure P-1) passed by the trial Court, Fatehgarh Sahib whereby an application under Section 151 CPC filed by him for recalling the order dated 02.08.2019 (Annexure P-2) vide which his defence was struck off and another opportunity for affording him to file written statement was also dismissed. Hence, the instant petition has been filed under Article 227 of the Constitution of India.

Learned counsel for the petitioner inter alia contends that it was due to the instructions given by his counsel before the trial Court, that he was unable to file his written statement as he had been told by the former that his presence would not be required on each and every date of hearing.

He submits that his non-appearance was unintentional and he could not be allowed to suffer on account of the fault and negligence of his counsel. It has been submitted that as soon as the petitioner came to know that he had been proceeded against ex parte vide order dated 09.01.2019, he moved an application for setting aside the said order, which was allowed by the lower Court vide order dated 27.03.2019. However, yet again his counsel, who gave him wrong instructions and told him that he would intimate him as and when his presence would be required before the Court. Learned counsel submits that his counsel before the trial Court again did not inform him. Learned counsel, thus, submits that in case the impugned order is not set aside, the petitioner would suffer irreparable loss for no fault of his.

Heard learned counsel and perused the relevant material on record.

A perusal of the impugned order reveals that the petitioner was proceeded against ex parte on 09.01.2019. The Court thereafter allowed him to join the proceedings subject to payment of costs, which admittedly he did not comply with and thereafter, the case was adjourned for filing of his written statement. After 27.03.2019, the case was adjourned to 19.04.2019, 10.05.2019, 03.07.2019, 24.07.2019, 01.08.2019 and it was only on 02.08.2019 when defendant No.1 after having been given numerous opportunities by the Court, did not file his written statement and as already observed above, did not even care to pay the costs, his defence was rightly struck off.

The provisions of Order 8 Rule 1 of the CPC, no doubt, are directory in nature, however, the Courts must exercise its discretion to

condone the delay, if any, in filing of written statements after exercising due circumspection and also should nip any attempt, which may be discernible on the part of the defendant to unnecessarily prolong the suit/case.

In the case in hand, as already observed above, the petitioner-defendant was granted repeated opportunities to file his written statement but in vain. Learned counsel has failed to bring to the notice much less satisfy this Court qua any cogent reason for failing to file his written statement within the stipulated time period. No doubt, the petitioner has very conveniently tried to put the entire blame on his counsel, however, it needs to be noticed that for submitting his written statement, the petitioner-defendant was not required to put in appearance on each and every date of hearing. Still further, the impugned order was passed on 10.03.2021 and it is after almost 2 years, the petitioner-defendant has woken up from his slumber to impugn the order vide which his defence was struck off.

As a sequel to above, this Court does not find any infirmity much less illegality in the order passed by the trial Court. Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

26.04.2022

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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No