

123 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2349-2022
Decided on : 18.10.2022

Mohd. Sadiq

..... Petitioner

Versus

Shakeela and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Imran Farooqi, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 19.04.2022 passed by Civil Judge, Jr. Divn., Malerkotla vide which application for granting opportunity to the petitioner to file written statement after recalling the order dated 18.12.2018 was dismissed.

Learned counsel for the petitioner *inter alia* contends that after the suit for declaration was instituted by respondent No.1 against the petitioner and the other, the petitioner appeared and engaged a counsel. On 18.12.2018, an application under Order 7 Rule 11 CPC was filed by respondent No.2 and it was informed that as the said application is pending, there is no requirement to file the written statement. Learned counsel submits that on account of the Covid-19, the working of the Courts was restricted and application under Order 7 Rule 11 CPC was decided on 09.02.2021. The petitioner came to know that his defence had already been struck off in the month of March, 2021. Thereafter, he immediately moved an application for recalling the order dated 18.12.2018 wherein his defence was struck off and granting one more opportunity to file the written

statement. Learned counsel for the petitioner submits that the case is at the initial stage and petitioner be granted one more opportunity to file the written statement otherwise, the petitioner would suffer an irreparable loss.

Heard.

No doubt, the petitioner has been negligent, however, the fact remains that in case he is not granted another opportunity to file his written statement, he could suffer irreparable loss, which in turn may result in miscarriage of justice. The case is still at a nascent stage and is fixed for filing of replication and further to settle the equity, the respondents can always be compensated with suitable costs.

Therefore, without issuing any notice to respondents and to avert any further delay, and also expenses which the respondents may have to incur to defend these proceedings, the impugned order dated 19.04.2022 is set-aside and the revision petition is disposed of in the following terms:-

- (i) The petitioner shall appear and file his written statement on the next date of hearing before the trial Court.
- (ii) In the event of default, the matter shall not be adjourned and no further opportunity shall be granted to the petitioner. The petitioner's defence would then be deemed to be struck-off.
- (iii) This, however, shall be subject to costs of Rs. 10,000/-, to be deposited before the trial Court, which shall be a condition precedent.

18.10.2022
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable :

Yes/No