

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.297

CR No.4397 of 2019 (O&M)

Date of Decision: 11.10.2022

Rajinder Singh

.... Petitioner

Versus

Bhagwan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Vaibhav Sehgal, Advocate
for the petitioner.

TRIBHUVAN DAHIYA, J.

This revision petition under Article 227 of the Constitution of India has been filed by the petitioner/plaintiff for setting aside the order dated 12.03.2019 (Annexure P-4) passed by trial Court, whereby respondent/defendants were allowed to file written statement at the stage of defendant evidence.

2. The facts of the case are, the petitioner/plaintiff filed suit for possession by way of specific performance on the basis of agreement to sell dated 22.10.1994. A perusal of the short orders placed on record as Annexure P-2 shows that after notice in the suit respondents/defendants No. 1 and 3 appeared before the Court, and the remaining defendants No.2, 4 and 5 were proceeded against *ex parte* on 07.10.2013. Subsequently, an application for setting aside the *ex parte* order was filed only by respondent/defendant No.2 on 29.10.2013. The *ex parte* proceedings against defendant No.2 were set aside by order dated 09.01.2014 on the statement of the petitioner/plaintiff that he had no objection to setting aside of the same. Again on 12.10.2016, respondent/defendants No.1 to 3 were proceeded against *ex parte*, as none

appeared before the Court despite the case having been called for hearing several times. On 03.11.2016, the defendants' counsel requested for an adjournment to move an application for setting aside the *ex parte* proceedings, which was granted, and the case was adjourned to 21.11.2016 for the purpose. Finally, the application under Order IX Rule 7 of CPC on behalf of the respondent/defendant No.1 was filed on 12.10.2016. The said application was allowed by the Court vide order dated 13.12.2016, and the *ex parte* proceedings dated 12.10.2016 were set aside. After that, trial of the suit proceeded, and all the plaintiff's witnesses were examined. He closed his evidence in the affirmative on 30.10.2018. Thereupon, respondents/defendants examined their witnesses DW-1, DW-2 and DW-3 on 13.12.2018 in examination-in-chief. DW-1 was partly cross examined and DW-2 completely. The case was then adjourned for the remaining defendants' evidence to 12.03.2019.

3. After examination of the defendants' witnesses, an application dated 18.02.2019 (Annexure P-3) was filed by the respondents/defendants seeking permission to file written statement. The said application was allowed by the trial Court, vide impugned order dated 12.03.2019, without permitting the plaintiff to file reply to the same on the ground that *ex parte* proceedings against the defendants were set aside. The written statement was taken on record, issues were framed and the case was adjourned for defendants' evidence.

4. Learned counsel for the petitioner/plaintiff has submitted that the impugned order is non-speaking and there was no occasion for the trial Court to allow the respondent/defendants to file written statement at this

belated stage, much beyond the period of limitation prescribed under Order VIII Rule 1 CPC.

5. As per Order VIII Rule 1 CPC, to file the written statement upper time limit of ninety days has been provided. It is only under exceptional circumstances and on account of reasons for delay having been explained to the satisfaction of the Court, that the written statement can be allowed to be filed beyond the prescribed period of limitation. Reference in this regard can be made to the judgment of Hon'ble Supreme Court of India rendered in the case of *Atcom Technologies Limited versus Y.A.Chunawala and Co. & others*, 2018(3) Civil Court Cases 322 (S.C.). Paragraphs No.15 and 16 of the said judgment read as under:

15. This provision has come up for interpretation before this Court in number of cases. No doubt, the words 'shall not be later than ninety days' do not take away the power of the Court to accept written statement beyond that time and it is also held that the nature of the provision is procedural and it is not a part of substantive law. At the same time, this Court has also mandated that time can be extended only in exceptionally hard cases. We would like to reproduce the following discussion from the case of *Salem Advocate Bar Association, Tamil Nadu v. Union of India*, 2005(2) Apex Court Judgments 492 (S.C.): 2005(3) Civil Court Cases 420 (S.C.): 2005(6) SCC 344: "21.... There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time

can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1.

16. In such a situation, onus upon the defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within thirty days. When that is a requirement, could it be a ground to condone delay of more than 5 years even when it is calculated from the year 2009, only because of the reason that Writ of Summons were not served till 2009?

6. In the instant case there was no satisfactory reason assigned by the defendants for the delay in filing the written statement. The only ground mentioned by the trial Court while allowing the application for filing the written statement and dispensing with the requirement to file reply to it by the plaintiff is, the setting aside of *ex parte* proceedings against the defendants. This only underlines causal approach of the trial Court in dealing with the issue of seminal importance. The order has been passed by ignoring the material facts on record. It is apparent that the respondents/defendants were proceeded against *ex parte* twice over, firstly, on 07.10.2013, and again on 12.10.2016. The suit in question was filed on 30.01.2013 and trial has proceeded over the years to a stage where almost all the evidence of the parties has been led; defendants have cross-examined the plaintiff's witnesses and have led their evidence as well. Despite that, they did not take care to file written statement on time, nor did they come up with any satisfactory explanation as to why it could not be filed within the

prescribed period. Therefore, there was no justification for the trial Court to allow the application to file the written statement, that too without even affording any opportunity to the petitioner/plaintiff to file reply to the said application. This is violation of the Principles of Natural Justice also.

7. In view of the aforesaid, it is apparent that the order of the trial Court dated 12.03.2019 (Annexure P-4) is contrary to the settled law as well as violative of the Principles of Natural Justice; it is, therefore, set aside.

8. Petition stands allowed.

(TRIBHUVAN DAHIYA)
JUDGE

11.10.2022
Maninder

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