

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

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IN VIRTUAL COURT

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**CR No. 2181 of 2021
Date of decision : 18.2.2022**

Municipal Corporation, Zone-C, Ludhiana

.....Petitioner

Vs.

Bhupinder Kaur and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Harsh Aggarwal, Advocate, for the petitioner

Rajbir Sehrawat, J. (Oral)

This is a petition under Article 227 of the Constitution of India for quashing the orders dated 30.10.2018 (Annexure P-2) and 01.11.2019 (Annexure P-5), passed by the Additional Civil Judge, (Senior Division), Ludhiana, in Civil Suit No. 3255 of 2018 titled as 'Bhupinder Kaur v. Municipal Corporation, Ludhiana and others'.

It is submitted by counsel for the petitioner that the petitioner/defendant in the suit is a public body, which needs to defend the suit. In the line of that effort only, the defendants had sought the documents to prepare the written statement. However, the said documents were not supplied in the first instance. When those were supplied, the petitioner had changed its counsel representing it before the trial Court. Therefore, again the documents were sought and the case was adjourned. The petitioner was waiting for supply of the documents, therefore, written statement could not be filed. Hence, it is submitted that the default in filing written statement is not intentional.

In view of the orders intended to be passed, it is not considered appropriate to issue notice to the other side, at this stage.

Having heard counsel for the petitioner and having gone through the record, this Court finds that the trial Court had granted sufficient opportunities to the petitioner to file its written statement. The case was adjourned by the trial Court three times before one of the impugned orders, striking of the defence of the petitioner was passed. Those three dates were wasted by the petitioner by moving application for supply of some documents. The said documents were, undisputedly, supplied to counsel for the petitioner. However, then the petitioner changed the counsel and again prayed for supply of the same documents. This prayer made by the petitioner was totally unjustified. Mere change of counsel would not have been any ground for repeatedly providing the same documents to the petitioner. Accordingly, the said application was rightly dismissed by the trial Court. Therefore, on 30.10.2018, the petitioner along with other defendants was again granted opportunity to file written statement. On that date the case was adjourned to be taken up after lunch. Some of the defendants did file the written statement, however, the petitioner chose not to even appear before the trial Court. Therefore, the trial Court had struck of the defence of the petitioner. Subsequently, the petitioner filed application for recalling of the said order; with a prayer to permit the petitioner to file written statement and to defend the suit. That has also been found to be not maintainable by the trial Court. In view of the facts mentioned above, this Court does not find any impropriety in the order passed by the trial Court, whereby the defence of the petitioner has been struck of. However, the procedural law is hand-made to advance the

interest of substantial justice. In case of the conflict between the procedural law and the interest of substantial justice, the Court has to lean towards the advancement of substantial justice. Moreover, the petitioner is a public body, which requires to be granted some opportunity to place on record its written statement, due to lack of which some grave prejudice can happen in the case. Therefore, it would not be unjustified to grant one more opportunity to the petitioner to file written statement and accordingly, to defend the suit, however, by putting an appropriate financial burden upon it.

Accordingly, the impugned orders are set aside and the present petition is disposed of with a direction to the trial Court to grant one more effective opportunity to the petitioner to file written statement and to defend the suit accordingly. A cost of Rs.15,000/-is imposed upon the petitioner, to be deposited with the Institute of Blinds, Sector 26, Chandigarh; within a period of two weeks from today. The cost so paid by the petitioner is ordered to be recovered from the personal pocket of the then Commissioner of the petitioner Municipal Corporation, Ludhiana. If the cost is not deposited as ordered above; then the trial Court shall ensure the recovery of the same.

(RAJBIR SEHRAWAT)
JUDGE

18.2.2022

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No