

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

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IN VIRTUAL COURT

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**CR No. 2911 of 2021
Date of decision : 4.2.2022**

Jagsir Singh

.....Petitioner

Vs.

Ashwani Kumar

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. APS Pakka, Advocate, for the petitioner

Mr. Prince Goel, Advocate, for the respondent

Rajbir Sehrawat, J. (Oral)

This petition has been filed under Article 227 of the Constitution of India for setting aside/quashing the impugned order dated 17.3.2021 (Annexure P-12), passed by the Civil Judge (Senior Division), Bathinda, in Civil Suit No. 677 of 2019, titled as 'Ashwani Kumar v. Jagsir Singh', whereby the defence of the petitioner/defendant has been struck off on account of failure to file written statement within 90 days.

It is submitted by counsel for the petitioner that the petitioner had not deliberately avoided the filing of written statement within time. It was only under a bona-fide impression that since the application under Order 7 Rule 11 CPC had been filed and the same was pending, that the written statement could not be filed. However, on the date when the order was passed by the Court, striking off the defence of the petitioner, the petitioner had filed application for placing on record the written statement. That application is already on record

of the trial Court, however, the same has not been made part of the case record as such. The counsel has further submitted that the limitation of 90 days is not mandatory. The case has not proceeded from the stage of service of process upon the parties. Hence, the matter is at initial stage only. Therefore, no prejudice would be caused to the plaintiff if the petitioner is permitted to file the written statement and to contest the suit.

On the other hand, the counsel for the respondent submits that the petitioner had been delaying the proceedings of the suit. In his earlier blatant effort, the petitioner filed application under Order 7 Rule 11 CPC. Although the said application was dismissed by the Court, however, even after decision of the said application, the petitioner did not file the written statement despite availing opportunities. Moreover, the pendency of an application under Order 7 Rule 11 CPC is not a ground not to file the written statement. Therefore, the petitioner should have filed the written statement in time. The trial Court has rightly struck off the defence of the petitioner.

Having heard the counsel for the parties and having perused the record, this Court is of the opinion that there is no doubt that the petitioner has made some attempt to delay the proceedings and has wasted Court time without filing written statement even after decision of his application under Order 7 Rule 11 CPC. Therefore, there is no impropriety in the order passed by the Court below, as such. However, it is settled law that the law of procedure is hand made to advance the substantial justice. In case of conflict between the procedural law and the substantive justice, the Court has to lean towards interest to the substantial justice. Hence, it would not be unjustified to grant one more opportunity to the petitioner to file written statement and to defend

his suit, in accordance with law, however, by putting him under appropriate financial burden so as to make him realise his mistake of wasting time of the Court.

Accordingly, the present petition is disposed of by setting aside the order passed by the Court below and with a further direction to the trial Court to grant one effective opportunity to the petitioner to file written statement and to defend his suit accordingly, subject to payment of Rs.10,000/-as costs, to be deposited with the Institute of Blinds, Sector 26, Chandigarh, within a period of 15 days from today.

It is clarified that the trial Court shall grant the opportunity of filing written statement and entering into defence only on production of the receipt by the petitioner qua having deposited the costs as ordered above.

(RAJBIR SEHRAWAT)
JUDGE

4.2.2022

Ashwani

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