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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR-4128-2022****Date of Decision: November 30, 2022**

Rupika Sanjeev Grover

..... Petitioner

Versus

Romesh Chander Mahajan and ors.

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Kartik Gupta, Advocate for the petitioner.

HARKESH MANUJA, J.(ORAL)

By way of present revision petition, challenge has been made to an order dated 27.07.2022 passed by the Court of Additional Civil Judge (Senior Division), Faridabad, whereby prayer made by the petitioner/ plaintiff (hereinafter referred to as 'the petitioner') for forfeiting the rights of respondents No.1 & 2/ defendants No.1 & 2 (hereinafter referred to as 'respondents No.1 & 2) to file their written statement has been declined.

Petitioner filed a suit for partition and permanent injunction against respondents on 15.06.2019. The respondents appeared before the trial Court on 12.07.2019. As no written statement was filed at the instance of respondents for a period of more than 120 days, petitioner moved an application under Order 8 Rule 1 read with Order 8 Rule 10 CPC praying for forfeiting the rights of respondents to file their written statement.

Immediately thereafter, respondents No.1 & 2 filed their written statement before the trial court on 10.12.2021. It may be

pointed out her that the written statement was filed at the instance of respondents No.1 & 2 under the signatures of their counsel without the same being signed by them and even without any verification to the same.

Vide order dated 27.07.2022, the trial Court has declined the prayer made by the petitioner for forfeiting the rights of respondents No.1 & 2 to file their written statement; rather on the contrary, respondents No.1 & 2 have been permitted to sign and verify their written statement dated 10.12.2021 without making any change in its contents. It is the aforesaid order, which has been impugned by way of present revision petition.

Learned counsel for the petitioner vehemently contends that the trial Court has committed an error of law while dismissing the application filed at the instance of petitioner. He further submits that once the respondents failed to file their written statement for a period of almost 02 years of their appearance, their right to file the same should have been forfeited in view of provisions of Order 8 Rule 1 CPC and the trial Court should have pronounced the judgment against them there and then by invoking the provisions of Order 8 Rule 10 CPC. Learned counsel also relies upon the decision rendered by the Hon'ble Supreme Court in **Sagufa Ahmed and ors. Vs. Upper Assam Plywood Products Pvt. Ltd. And ors.**, (2012) 2 SCC 317 and **Desh Raj Vs. Balkishan (D) through proposed LR Ms.Rohini**, (2020) 2 SCC 708, to contend that the delay in filing of written statement could not be condoned by the trial Court in a routine manner.

I have heard learned counsel for the petitioner and gone through the paper-book as well as case law cited by him, but I am unable to accept the contentions raised at his instance.

A perusal of the title of suit shows that none of the parties to the litigation is resident of Faridabad, rather, all are presently residing at much distance therefrom which might have been one of the reasons for delay in filing of written statement on the part of respondents and that too in the difficult time of pandemic i.e. COVID-19. In the facts and circumstances, once a discretion has been exercised permitting the respondents to file their written statement under their signatures under due verification, which in fact would further the cause of justice and would also enable the respondents to put-forth their stand so as to contest their rights on merits, I see no reason to interfere with the judicious discretion exercised by the trial Court, in my revisional jurisdiction.

Besides it, I also find support from the decision rendered by the Hon'ble Supreme Court in **Kailash Vs. Nanhku and ors.**, 2005 (2) RCR (Civil) 379; wherein it has been held that the provision of Order 8 Rule 1 CPC being part of procedural law are directory in nature. For reference, relevant paragraph 45 (v) of the same is extracted hereunder:-

“45 (v) Though Order VIII, Rule 1 of the CPC is a part of Procedural Law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A

prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.”

So far as the judgments i.e. **Sagufa Ahmed’s** case (supra) and **Desh Raj’s** case (supra) are concerned, these are not applicable to the facts and circumstances of the present case.

In view of the discussion made hereinabove, I do not find any merit in the present revision petition and thus, the same is dismissed.

November 30, 2022
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No