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

**CR-5636-2022(O&M)
Date of decision :07.12.2022**

MADAN LAL AND ANR.

..... PETITIONERS

VS

KHEM CHAND GOYAL AND ANR.

..... RESPONDENTS

CORAM :HON'BLE MR.JUSTICE ALOK JAIN

Present :- Mr. Sidharath Godara, Advocate for the petitioners.

ALOK JAIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India praying for setting aside order dated 30.08.2022 (Annexure P-1), whereby, the right of the petitioners (respondents in the suit) to file written statement in defence have been struck off .

Learned counsel for the petitioners has argued that the matter between the parties is interlinked in multiple cases such as complaints under Section 138 of Negotiable Instruments Act instituted by them, and the suit for dissolution of firm filed by the plaintiff-respondent herein was in contradiction to the agreement dated 04.12.2020 entered between the parties. He further submits that the respondents had filed CRM-M-35370-2022 (Annexure P-6), which was fixed for hearing on 01.09.2022, and therefore,

written statement could not be filed on 30.08.2022 owing to the engagement of the petitioners to defend the case before the High Court.

Counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in the case titled "*Kailash v. Nanhku*," (2005) 4SCC 480 and also in the case titled "*Rajinder Tiwari v. KedarNath*". (2019) 14 SCC 286 to contend that the petitioners should get a fair opportunity to defend the suit on merits in accordance with law. He further relies upon the judgment of the Hon'ble Supreme Court in the case titled "*Sugandhi v. P.Rajkumar*, (2020)10, SCC 706 and prays that one opportunity be granted to the petitioners to file their written statement.

After hearing the counsel for the petitioners, this Court is of the opinion that at this stage, the issuance of notice of motion can be dispensed with in order to avoid further delay in disposal of the main suit by the trial Court as in the eventuality of issuance of notice of motion, this Court will have to direct the trial Court to either stay the further proceedings or to adjourn the case beyond the date fixed before this Court.

That procedures are handmade of justice and the substantial justice should be the paramount consideration and therefore this Court taking a lenient view in the light of the fact that at this stage, issuance of notice will only procrastinate the proceedings in the suit and moreso, no prejudice would be caused to the respondents and the same can be compensated by imposition of some costs.

Accordingly, the order dated 30.08.2022 (Annexure P-1) is set aside and the petitioners are granted one more effective opportunity to file their written statement.

Counsel for the petitioners has submitted that the matter is listed before the trial Court on 16.12.2022, and the written statement will be filed on the said date. The said request is allowed, however, subject to the payment of Rs.5000/- as cost to be paid to the plaintiff-respondent.

Accordingly, the present revision petition is disposed off in above terms.

Miscellaneous application, if any, also stands disposed of.

(ALOK JAIN)
JUDGE

07.12.2022
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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No