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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CR-4613-2022**

Date of Decision: November 22, 2022

Gurmej Singh and others

..... Petitioners

Versus

Jaswant Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.B.D. Sharma, Advocate for the petitioners.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition challenge has been made to an order dated 05.05.2022 passed by learned Additional Civil Judge (Senior Division), Amritsar; whereby the defence of the petitioners/ defendants No.1 to 6 (hereinafter referred to as 'the petitioners') has been struck off.

The facts leading to the present case are that a suit for declaration claiming joint ownership besides praying for possession and permanent injunction came to be filed at the instance of respondents No.1 to 5/plaintiffs (hereinafter referred to as 'respondents No.1 to 5'). The suit was filed in May 2021. After service, the petitioners appeared before the trial Court on 12.08.2021. Despite having availed 05 effective opportunities including few last, no written statement was filed at their instance, resulting into striking off their defence by the trial Court vide order dated 05.05.2022. It is the aforesaid order which has been impugned by way of present revision petition seeking one last opportunity to file their written statement.

I have heard learned counsel for the petitioners and gone through the paper-book.

Though sufficient opportunities were granted by the trial Court to the petitioners for the purposes of filing their written statement, however, considering the fact that the suit was still at the stage of effecting service upon respondents No.6 & 7/ defendants No.7 & 8 and even as of now, the proceedings in the suit are fixed for 18.01.2023 for the purpose of recording of evidence of respondents No.1 to 5/ plaintiffs, which is even yet to start discretion needs to be exercised in favour of petitioners so as to avoid prejudice to their rights.

The Hon'ble Supreme Court in **Kailash Vs. Nanhku and ors.**, 2005 (2) RCR (Civil) 379, while considering the provisions of Order VIII Rule 1 CPC, has held that the same is part of procedural law and hence directory in nature. Still further, keeping in view the substantial justice, the Hon'ble Supreme Court in **Siddalingayya Vs. Gurulingappa and ors.**, 2018 (1) RCR (Civil) 543, upheld the opportunity of filing written statement granted by the High Court. Even otherwise, upholding of the impugned order will cause serious prejudice to the rights of the petitioners as they will not be able to put-forth any defence to the claim set up by respondents No.1 to 5.

Accordingly by adopting a pragmatic approach rather than being hyper-technical, the revision petition is allowed. Impugned order dated 05.05.2002 is ordered to be set aside thereby granting one effective opportunity to the petitioners so as to file their written statement on the date fixed before the trial Court i.e. 18.01.2023.

However, the aforesaid order shall be subject to payment of costs of Rs.20000/- which shall be deposited with the trial Court on the date fixed and disbursed in favour of respondents No.1 to 5.

Keeping in view the nature of proceedings, the present petition is being decided without issuing notice to respondents No.1 to 5/ plaintiffs, least it may delay the progress of suit instituted at their instance.

However, in case, respondents No.1 to 5 find any misstatement of fact on part of the petitioners, they would be at liberty to approach this Court by moving an appropriate application in this regard.

November 22, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>