

124

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CR-4881-2022**

Date of Decision: November 23, 2022

Naresh Kumar

..... Petitioner

Versus

Asha Ahuja

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Namit Khurana, Advocate for the petitioner.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition challenge has been made to an order dated 15.11.2018 (P-3) passed by the Court of Civil Judge (Junior Division), Yamuna Nagar; whereby defence of the petitioner/ defendant (hereinafter referred to as 'the petitioner') has been struck off.

Facts leading to the present case are that the respondent/ plaintiff (hereinafter referred to as 'the respondent') filed a suit for declaration challenging an agreement to sell dated 18.07.2017 to be illegal null and void, besides seeking relief of permanent injunction with a prayer for restraining petitioner from interfering in his possession.

Upon notice, petitioner appeared before the trial Court on 12.12.2017 through his counsel Sh.P.K. Punia and sought time for filing of written statement. However, despite having been granted sufficient opportunity, no written statement was filed and resultantly, his defence was ordered to be struck off by the trial Court vide order dated 15.11.2011. Since then the suit is being adjourned for recording

of the evidence of respondent, however, a statement of not even a single witness has been recorded so far.

Impugning the order dated 15.11.2018 passed by the trial Court, learned counsel for the petitioner submits that the mistake of non-filing of written statement at the instance of petitioner has occurred primarily on account of miscommunication with the counsel representing him. He further submits that after 15.11.2018, the suit was adjourned to 03.10.2019 and on the said date no hearing took place and the suit was further adjourned to 27.01.2020. On 27.01.2020 the hearing was adjourned for 21.04.2020 and thereafter, on account of COVID-19 pandemic there were intermittent breaks in the Court hearings and accordingly, the suit could not be taken up on number of dates for an effective hearing. Learned counsel further submits that in the absence of any defence being put-forth by way of filing written statement, the petitioner will not be able to defend the suit in an effective manner which definitely will cause serious prejudice to his rights therein.

I have heard learned counsel for petitioner and have gone through the paper-book as well as the zimni orders passed by the trial Court which have been provided to me at the time of hearing. I find substance in the submissions made on behalf of the petitioner.

I find that in case, the impugned order is allowed to stand and the petitioner is deprived of his right to file written statement, he will not be able to put-forth his defence to the case set up by the respondent in the suit. Though, there appears to be lack of due diligence on the part of petitioner, however, considering the fact that

ever since the passing of the impugned order even the respondent has not been able to start his evidence and the proceedings in the suit have not moved further, it would be in the interest of justice to grant one effective opportunity to the petitioner so as to file written statement in order to protect his substantial rights involved in the suit.

Even 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 petitioner as he will not be able to put-forth any defence to the claim set up by respondent.

Accordingly by adopting a pragmatic approach; rather than being hyper-technical, the revision petition is allowed. Impugned order dated 15.11.2018(P-3) is ordered to be set aside thereby granting one effective opportunity to the petitioner so as to file his written statement on the date fixed before the trial Court. However, the aforesaid order shall be subject to payment of costs of Rs.15000/- which shall be deposited with the trial Court on the date fixed to be disbursed in favour of respondent.

Keeping in view the nature of proceedings, the present petition is being decided without issuing notice to the

respondent/plaintiff, least it may delay the progress of suit instituted at his instance.

However, in case, the respondent finds any misstatement of fact on part of the petitioner, she would be at liberty to approach this Court by moving an appropriate application in this regard.

November 23, 2022
tejwinder/anil

(HARKESH MANUJA)
JUDGE

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