

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

CR-5654-2022 (O&M)

Date of Decision: December 05, 2022

Sarabjit Kaur

..... Petitioner

Versus

Mukhtiar Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Amardeep Singh, Advocate for the petitioner.

HARKESH MANUJA, J. (ORAL)

By way of present revision petition, challenge has been made to orders dated 29.08.2022 and 21.11.2022 passed by the Court of Civil Judge (Junior Division), Amritsar; whereby defence of petitioner/ defendant (hereinafter referred to as 'the petitioner') has been ordered to be struck off and the prayer made for recalling thereof has also been declined.

Brief facts of the case are that based on an agreement to sell dated 13.02.2015, a suit for possession by way of specific performance along with relief of permanent injunction was filed at the instance of respondent/ plaintiff (hereinafter referred to as 'the respondent'). As per the zimni orders attached along with the present revision petition, the petitioner was initially proceeded against ex-parte vide order dated 17.03.2021. Later on, an application was moved at the instance of petitioner, invoking the provisions of Order 9

Rule 7 CPC for setting aside the ex-parte order/ proceedings dated 17.03.2021. The trial Court vide order dated 19.07.2022 allowed the same subject to payment of cost of Rs.1000/- and the proceedings in the suit were adjourned to 29.08.2022 for the purpose of payment of costs as well as for filing of written statement by the petitioners.

A perusal of the said order shows that although 29.08.2022 was going to be the first opportunity for the petitioner to file her written statement, however, the trial Court for the reasons best known to it made it to be the last one.

On 29.08.2022, the petitioner could not file her written statement and the trial Court ordered her defence to be struck off. The petitioner moved an application for recalling of the said order dated 29.08.0222, however, the same was rejected by the trial Court vide order dated 21.11.2022.

By way of the present revision petition, the petitioner has impugned the orders dated 29.08.2022 as well as 21.11.2022 passed by the Civil Judge (Junior Division), Amritsar.

Learned counsel for the petitioner submits that from a perusal of zimni orders passed by the Court below, it can be seen that no sufficient opportunity was ever afforded to the petitioner for filing of her written statement which shall cause serious prejudice to her rights in the litigation initiated at the instance of respondent. It has also been submitted that in the absence of her written statement on

record, the petitioner will not be able put-forth her defence and contest the suit in an effective manner.

I have heard learned counsel for the petitioner and gone through the paper-book. I find substance in the submissions made on behalf of the petitioner.

A perusal of zimni orders shows that practically on recalling of the ex-parte proceedings dated 17.03.2021, the petitioner was granted her first opportunity to file the written statement only on 19.07.2022 for 29.08.2022, which for the reasons best known to the trial Court itself was made the last one and the defence was struck off. The amazing swiftness shown by the trial Court on 29.08.2022 while striking off the defence of the petitioner appears to be unreasonable and unwarranted. Still further, order dated 29.08.2022 of striking off defence of petitioner could have even preceded by an order imposing costs upon the petitioners.

To my mind, the trial Court again went wrong while rejecting the prayer made by the petitioner for recalling of its order dated 29.08.2022 while recording a reason that she was guilty of delaying the trial, in fact, the record shows otherwise. The suit in the present case was filed on 05.04.2019. Thereafter the summons could not be issued/ served on account of non-filing of copy of plaint and for want of filing of correct address at the instance of respondent from the day of filing of the suit till 19.11.2019 when the trial Court ordered for summoning the petitioner by way of publication in the newspaper.

Even for the said purpose, the respondent took almost 02 months for filing of publication charges. Thus, from the zimni orders itself, it is more than clear and apparent that the delay in disposal of the suit was solely and exclusively attributable to the respondent himself and not to the petitioner.

While passing the impugned orders, the trial Court failed to take into consideration the fact that right of filing written statement is not merely procedural; but in fact is a substantial right which enables any party to put-forth defence in order to defend rights in the litigation. Foreclosure of rights to file written statement in a casual manner and that too by adopting hyper-technical approach, serious prejudice is caused to the parties to the litigation which needs to be avoided at the first instance itself by the trial Court by adopting pragmatic approach.

In view of the discussion made hereinabove, revision petition is allowed. Impugned orders dated 29.08.2022 and 21.11.2022 passed by the Court of Civil Judge (Junior Division), Amritsar are hereby set aside granting one effective opportunity to the petitioner so as to file her written statement to enable her to defend her rights in proper and effective manner.

Keeping in view the nature of proceedings, the present petition is being decided without issuing notice to the plaintiffs, least it may delay the proceedings in the suit filed at their instance.

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

December 05, 2022
sanjay

(HARKESH MANUJA)
JUDGE

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