

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

**Civil Revision No.5954 of 2022
Date of Decision:-15.12.2022**

Smt. Kavita

...Petitioner

Versus

Deepak

...Respondent

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rahul Makkar, Advocate
for the petitioner.

NIDHI GUPTA J.(Oral)

Prayer in this Civil Revision is for setting aside the orders dated 31.10.2022 (Annexures P-4 and P-5) passed by the Additional Civil Judge (Sr. Divn.), Meham, whereby the learned Court has struck off the defence of the petitioner, and also dismissed the petitioner's application for supplying a copy of the plaint alongwith all documents thereto.

It is the case of the petitioner that the respondent/plaintiff had filed a suit for possession by way of decree of specific performance of agreement to sell vide registered document No.262 dated 10.8.2020 executed by the petitioner/defendant in favour of the respondent/plaintiff in respect of suit land; and also directing the petitioner/defendant to execute the registered sale deed in favour of the respondent/plaintiff of the above

suit property; and suit for permanent injunction restraining the petitioner/defendant from alienating the suit property.

Notice of the suit was issued to the petitioner for 08.7.2021. It is the case of the petitioner that the summons were served through husband of the petitioner and on the date of hearing i.e. on 08.7.2021 the husband of the petitioner was out of town and forgot to inform the petitioner about the case, due to which the petitioner was proceeded against ex-parte.

After that the petitioner filed an application for setting aside the ex-parte order dated 08.7.2021 and reply to the application was also filed by the opposite side. Thereafter, after hearing both the sides, the learned Court allowed the application of the petitioner by setting aside the ex-parte order vide order dated 04.10.2022 subject to costs of Rs.1000/-, and only one opportunity was granted to the petitioner to file written statement on the adjourned date i.e. 31.10.2022.

On 31.10.2022, because of non-filing of costs of Rs.1000/- and non-filing of the written statement, defence of the petitioner has been struck off. It is submitted by learned counsel for the petitioner that the petitioner was unable to file the written statement on the said date as no copy of the plaint or the documents thereto were supplied to the petitioner. It is further submitted by learned counsel that copy of the plaint alongwith documents be supplied to the petitioner and one effective opportunity be granted thereafter to file the written statement.

Notice of motion is being dispensed with at this stage, as that will only further delay disposal of the case.

I have heard learned counsel for the petitioner and perused the

record.

The Court below vide order dated 31.10.2022 passed the following order, which reads as under :-

“File again taken up as at this stage an application has been filed by the counsel for defendant for supply of document of plaintiff's claim for filing of written-statement. It is alleged by the counsel for defendant that the defendant is unable to file the written-statement without having knowledge of documents and plaint of plaintiff. However, this submission of, learned counsel for defendant is not justified since no such submission was made by him when earlier order of even date was passed. Moving of an application at this stage showing the conduct of the party which cannot be allowed at all. Moreover no submission was made when the application for setting aside was granted and when the opportunity was given to the defendant for filing the written-statement and as such, this version is undoubtedly an after thought version to delay the proceeding of the case. In these circumstances, the application filed by the defendant through counsel is hereby dismissed since the defendant has already been struck off. Matter is adjourned to 03.01.2023 i.e. date already fixed.”

Be that as it may, in the interest of justice, the learned Additional Civil Judge (Sr. Divn.) Meham is directed to accord one effective opportunity to the petitioner herein (defendant before the Court below) to file the written statement, however, subject to payment of costs of Rs.5000/-. A copy of plaint alongwith all documents appurtenant thereto, be also provided to the petitioner/defendant before the date fixed for filing the

written statement, to enable the petitioner to file written statement.

The petition stands disposed of in the above terms.

December 15, 2022
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No