

102 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-8165-2019
Decided on : 27.05.2022

Ganga Ram (deceased) through his LRs Petitioner

Versus

M/s Rangoli Buildtech Pvt. Ltd. and others Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ram Pal Verma, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 12.09.2019 (Annexure P-8) passed by Addl. Civil Judge, Sr. Divn., Sonapat vide which an application under Order 8 Rule 1 CPC filed by the plaintiffs-petitioners for taking the written statement filed by defendant No.1 off the record of civil suit and for striking off the right of defendant No.3 for filing written statement was partly dismissed.

Learned counsel for the petitioner submits that the trial Court gravely erred by taking the written statement filed by respondent No.1 on record even though it had been filed after more than three years. He further submits that since the written statement was filed much beyond the prescribed mandatory period of 90 days, the Trial Court should have allowed the application filed by the petitioner to take the written statement of defendant No.1 off the record.

Heard learned counsel and perused the relevant material available on record.

A perusal of the zimni orders (Annexure P-6) reveals that learned counsel for respondent No.1 appeared and filed his memo of appearance on 18.03.2016. Power of attorney on behalf of respondent No.3 was also filed on the same day. Thereafter, case was adjourned to 08.04.2016 and then to 20.07.2016 for service of respondent No.2. On 20.07.2016, respondent No.2 was proceeded against ex parte and an application under Order 7 Rule 11 CPC on behalf of respondent No.1 was moved. The petitioner filed his reply to the said application on 15.10.2016 and thereafter, the case was adjourned to 22.11.2016 for arguments. However, the case thereafter kept on getting adjourned on various dates as the arguments were not advanced for one reason or the other. The application under Order 7 Rule 11 CPC was finally decided on 12.09.2018. The petitioner was directed to affix Court fees on 10.10.2018. However, on 10.10.2018 the case was adjourned to 20.12.2018 for filing of the written statement. On the adjourned date, the written statement and the reply to the said application was not filed and the case was then adjourned to 08.02.2019 for filing of the written statement and the reply to the said application on behalf of the respondents-defendants, subject to last opportunity. Thereafter, respondent No.1 filed both his written statement and reply to the said application on the adjourned date i.e. 08.02.2019.

Therefore, in the above facts and circumstances it cannot be said that the written statement was filed beyond the period prescribed under Order 8 Rule 1 CPC. Still further, the period so prescribed is not mandatory

and in a fit case, the trial Court may allow a defendant to file his written statement even beyond the period prescribed under Order 8 Rule 1 CPC. In the present case, there was no delay, as such, in the filing of the written statement of respondent No.1.

In the considered opinion of this Court, the impugned order thus, does not suffer any such irregularity, which would warrant any interference of this Court. Accordingly, the present petition stands dismissed.

27.05.2022
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No