

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

**Civil Revision No. 205 of 2023 (O&M)
Date of Decision: 22.11.2023**

Jain Sales India & Anr.

...Petitioners

Versus

Shree Atma Nand Jain & Anr.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Harsh Goyal, Advocate
for the petitioners.**

**Mr. Irfan Farooqi, Advocate
For the respondents.**

KARAMJIT SINGH, J.

1. The present revision petition has been filed by the petitioners/ tenants against the order dated 23.09.2022 (Annexure P-1) whereby the defence of the petitioner has been struck off and order dated 19.12.2022 (Annexure P-2) whereby the application filed by the petitioners for recalling of order (Annexure P-1) have been dismissed by the Court of Rent Controller, Malerkotla in rent petition Shree Atma Nand Jain Sabha Vs. Jain Sales India.

2. The brief facts of the case are that respondent/ landlord has filed eviction petition against the petitioners under Section 13 of East Punjab Urban Restriction Act. Notice of the same was issued to the petitioners and the petitioners put in appearance before the Court of Rent Controller for the first time on 31.05.2022, but failed to file written statement and consequently impugned order (Annexure P-1) was passed whereby the defence of the petitioners was struck off and the application filed by the petitioner for recalling of the said order was also declined by the Rent

Controller vide order (Annexure P-2). Being aggrieved, the petitioners have filed the present revision petition.

3. I have heard the counsel for the parties.

4. The counsel for the petitioners submits that there was no intentional delay on the part of the petitioners to file the written statement. That actually on 11.07.2022 the rent petition was put up in pre Lok Adalat as there were some chances of compromise and then it was put up in Lok Adalat which was held on 13.08.2022 but the matter was not compromised in Lok Adalat and was sent back to the regular Court for 23.09.2022 and on that very date the impugned order (Annexure P-1) was passed by the Rent Controller without affording effective opportunity to the petitioners to file written statement. It is further submitted that the written statement is ready and will be filed on the next date fixed, in case necessary permission is granted to do so. The counsel for the petitioners further made prayer that one last opportunity be given to the petitioners to file the written statement.

5. The present petition is resisted by the counsel for the respondent, who while supporting the impugned order submits that there is no illegality in the same and that there was delay on the part of the petitioners to file the written statement which they failed to file within the prescribed statutory period as per the provisions of CPC. The counsel for the respondent has further submitted that the petitioners have also failed to clear the arrears of rent.

6. I have considered the submissions made by counsel for the parties.

7. From the perusal of Annexures P-4 to P-7, it appears that on receiving the notice of eviction petition the petitioners for the first time

appeared before the Rent Controller on 31.05.2022 and the petition was adjourned to 11.07.2022 for filing of written reply. However, on 11.07.2022 file was put up before pre Lok Adalat and then posted to 13.08.2022 to be put up in the Lok Adalat and accordingly it was put up before Lok Adalat on 13.08.2022 and then sent back to the Court concerned for 23.09.2022 as no compromise was effected between the parties. Finally on 23.09.2022 impugned order (Annexure P-1) was passed whereby the defence of the petitioners was struck off by the Rent Controller. From the perusal of the above, it could be easily made out that only one effective opportunity as granted to the petitioners to file their written statement and finally their defence was struck off.

8. Further proviso to Rule 1 Order 8 CPC is directory and not mandatory in nature and the time limit provided under statute for filing the written statement in civil proceedings could be extended by the Court. In **Bharat Kalra Vs. Raj Kishan Chhabra 2022(3) Apex Court Judgments (SC) 598**, the Hon'ble Supreme Court condoned delay of 193 days in filing of written statement. Again, the Hon'ble Apex Court in **Raj Process Equipments & Systems Pvt. Ltd. & Ors. Vs. Honest Derivatives Pvt. Ltd. 2023(1) RCR(Civil) 511** has reiterated that the time limit provided under statute for filing of a written statement is directory and not mandatory in nature.

9. Further, it is settled law that the law of procedure is handmaid to advance the substantial justice and the Court has to give preference to the substantial justice over the procedural technicalities to further the cause of justice. So, it would not be unjustified to grant one more opportunity to the petitioners to file written statement in order to defend the eviction petition

but the same will be subject to cost.

10. In light of the above, this Court is of the considered opinion that the impugned orders are liable to be set aside. Consequently, without commenting on the merits of the case, the instant revision petition is allowed and impugned orders Annexures P-1 and P-2 are set aside and petitioners are granted one opportunity to file the written statement subject to cost of Rs.10,000/- which is to be paid to the other party on the next date of hearing.

11. The rent petition is at its initial stage, so direction is given to the Rent Controller to decide the application, if any, filed by the respondent for assessment of provisional rent at the earliest, preferably within 06 weeks of the next date fixed.

(KARAMJIT SINGH)
JUDGE

22.11.2023

Jiten

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No