

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

CR-343-2023 (O&M)

Date of Decision: 19.01.2023

Ved Parkash @ Vedu and another

.....Petitioners

Versus

Sharwan Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashish Gupta, Advocate &
Mr. K.S. Siwach, Advocate
for the revisionists

ARUN MONGA, J. (ORAL)

Revision Petition herein, under Article 227 of Constitution of India is for setting aside the impugned order dated 21.10.2022 (Annexure P-4) passed by learned Motor Accidents Claims Tribunal, Fatehabad, whereby in claim petition filed by claimants (respondents No.1 to 5 herein) under Section 163-A of the Motor Vehicles Act, 1988, the defence of the revisionists (who are driver and owner of the alleged offending vehicle), was struck off.

2. Learned counsel for revisionists submits that matter was adjourned for 05.09.2022 for appearance of respondent-Insurance Company and for filing written statement on behalf of the revisionists. However, on 05.09.2022, the application for granting permission to amend name of respondent-Insurance Company in the claim petition was filed and the same was allowed and the case was adjourned to 21.10.2022. Though the written statement of revisionists was ready but could not be filed on the adjourned date as one of the revisionists was unwell and they requested for a short date.

However, their request was not acceded to and their defence was struck off vide impugned order.

2.1. Learned counsel for revisionists further submits that impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, they may be permitted to file their written statement in the interest of justice and equity.

2.2. Learned counsel further contends that rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. According to learned counsel, no prejudice would indeed be caused to the claimants if the revisionists are permitted to file their written statement.

3. Given the nature of order being passed, there is no necessity to issue notice to the claimants, as no prejudice would be caused to them. Notice to the respondents herein is thus dispensed with.

4. I have heard learned counsel for the revisionists and gone through the case file.

5. I am of the view that provisions contained in Order 8 Rule 1 CPC, ordinarily ought to be adhered to, but learned Tribunal could have permitted to file written statement subject to certain penalty as a deterrent. Further, provisions contained in Order 8 Rule 1 CPC, *ibid*, have been held to be directory in nature by the Supreme Court in ***Salem Bar Association Vs. UOI, 2005(6) SCC 344***. Court/Tribunals should not, therefore, be too harsh to strike off the defence of the defendants in undue haste at very early stage.

6. Learned counsel for revisionists undertake to file their written statement on or before the next adjourned date.

7. Keeping in view the facts and circumstances of the case, I deem it appropriate to grant one more opportunity to the revisionists for filing the written statement subject to costs of Rs.5,000/- to be paid to the claimants, which shall be a condition precedent. If the costs are not paid, as directed, the impugned order shall stand restored. To that extent, the impugned order is modified and the revision petition is allowed.

(ARUN MONGA)
JUDGE

January 19, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No