

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-3618-2017  
Date of Decision:-31.08.2023

AJIT WALIA AND ORS.

... Petitioners

Versus

RUBY WALIA

... Respondent

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**CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH**

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Present:- Mr. Ravi Dutt Sharma, Advocate  
for the petitioners.

Mr. J.S. Mehndiratta, Advocate  
for the respondent.

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**KARAMJIT SINGH, J. (Oral)**

1. The present petition has been filed by the petitioner against the order dated 12.4.2017 (Annexure P-13) passed by the Court of Civil Judge (Junior Division), Jagadhri, whereby the defence of the petitioners has been struck off in a civil suit title Ruby Walia vs. Ajit Walia and Ors.
2. The brief facts of the case are that respondent/plaintiff filed suit for mandatory injunction directing the petitioner/defendant to handover the dowry articles/ornaments detailed in the list (Annexure A). On notice, petitioners put in their appearance and filed an application under Order 7 Rule 11 CPC for rejection of the plaint and the learned

trial Court struck off the defence of the petitioners vide impugned order (Annexure P-13) without finally disposing of an application under Order 7 Rule 11 CPC filed by the petitioners.

3. I have heard the counsel for the parties.
4. The counsel for the petitioner *inter alia* contends that the direction given by the learned trial Court to the petitioner to file the written statement without deciding the application under Order 7 Rule 11 CPC is procedural irregularity and thus the trial Court acted in an irregular manner and consequently the impugned order whereby the defence of the petitioner was struck off due to non-filing of the written statement within prescribed statutory period is also illegal. In support of his contentions, the counsel for the petitioners has placed reliance upon the decisions rendered by Hon'ble Supreme Court in **Saleem Bhai and Anr. vs. State of Maharashtra and Ors. 2003(1) RCR (Civil) 464** and **R.K. Roja vs. U.S. Rayudu and Anr. 2016(3) RCR (Civil) 810**.
5. On the other hand the counsel appearing on behalf of the respondent while supporting the impugned order submits that the learned trial Court rightly struck off the defence of the petitioners as they failed to file written within the prescribed period. It is further submitted that there is no illegality in the impugned order and that the revision petition be dismissed.
6. I have considered the submissions made by counsel for the parties.

7. From the perusal of the record, it is apparent that on receiving the notice of suit, the petitioner appeared in the trial Court and firstly filed an application Annexure P-3 directing the respondents to supply the list of articles mentioned in the plaint and copy of documents relied upon by the respondent and thereafter an application (Annexure P-7) under Order 7 Rule 11 CPC was filed by the petitioners on 8.7.2016. However, the learned trial Court did not decide the said applications and then the petitioners filed an application (Annexure P-11) dated 9.3.2017 with request to the trial Court to decide the application under Order 7 Rule 11 CPC. However, despite filing of said application, no order was passed by the learned trial Court in an application filed by the petitioner under Order 7 Rule 11 CPC and rather in the meantime, the learned trial Court struck off the defence of petitioner vide impugned order dated 12.4.2017 without deciding the earlier application filed under Order 7 Rule 11 CPC.
8. The Hon'ble Apex Court in **Saleem Bhai's** case (supra) held that for the purposes of deciding an application under Order 7 rule 11 CPC, the averments in the plaint are germane and the pleas taken by the defendants in the written statement would be wholly irrelevant at that stage, therefore a direction to file the written statement without deciding an application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial Court. The order therefore suffers from non-exercising of the jurisdiction vested in the Court as well as procedural irregularity and consequently the civil appeals were allowed and the matter was

remitted to the trial Court for deciding the application under Order 7 Rule 11 CPC on the basis of averments in the plaint, in accordance with law. The similar view was taken by the Hon'ble Supreme Court in **R.K.Roja's** case (supra) wherein it was held that once an application for rejection of plaint is filed under Order 7 Rule 11 CPC, the Court has to dispose of the same before proceeding with the trial.

9. Now adverting to the facts of the present case, it is evident that the learned trial Court without disposing of an application filed under Order 7 Rule 11 CPC by the petitioners, asked them to file their written statement and finally struck off the defence of the petitioners as they failed to file the written statement within stipulated period. Even at the time of passing of the impugned order, the application filed by the petitioner under Order 7 Rule 11 CPC was pending for its disposal.
10. Further proviso to Rule 1 Order 8 CPC is directory and not mandatory in nature and the time limit provided under statute for filing written statement in civil proceedings could be extended by the Court as has been held by the Hon'ble Apex Court in **Raj Process Equipments and Systems Pvt. Ltd. and Ors. vs. Honest Derivatives Pvt. Ltd., 2023(1) RCR (Civil) 511.**
11. In the light of the settled position of law as discussed above, the impugned order cannot be sustained. The present petition is allowed and impugned order is set aside and the learned trial Court is directed to firstly decide an application filed by the petitioners under Order 7 Rule 11 CPC in accordance with law, expeditiously without granting

unnecessary adjournments, preferably within a period of next 2 months of the passing of this order. In case the application filed under Order 7 Rule 11 CPC is dismissed, then the petitioner be given one opportunity to file their written statement within a period of 1 month of the disposal of aforesaid application.

31.08.2023  
Gaurav Sorot

( KARAMJIT SINGH)  
JUDGE

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| Whether reasoned / speaking? | Yes / No |
| Whether reportable?          | Yes / No |