

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-465-2023 (O&M)

Date of Decision: 24.7.2023

Uttar Haryana Bijli Vitran Nigam Limited

....Petitioner

VERSUS

Sunil Kumar and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Mohit Aneja, Advocate,
for the petitioner.

Mr. Rajesh Goel, Advocate,
for respondent No.1.

KARAMJIT SINGH, J.

Present revision petition has been filed by the petitioner against order dated 6.4.2022 (Annexure P-6) passed by the Court of Civil Judge, Junior Division, Panipat vide which prayer of the petitioner for grant of one more opportunity to file written statement in the civil suit titled Sunil Kumar v. Uttar Haryana Bijli Vitran Nigam Limited and others, has been declined.

2. Counsel for the petitioner submits that provision of order 8 Rule 1 CPC is not mandatory in nature, it being procedural. He further submits that Hon'ble Apex Court in **Sambhaji and others v. Gangabai and others**; Civil Appeal No.6731 of 2008 decided on 20.11.2008 has observed that procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice and further held that the trial Court can accept written statement even after lapse of 90 days. So, prayer is made that one more opportunity be given to the petitioner to file written statement.

3. Present petition is resisted by counsel for respondent No.1 who submits that already sufficient opportunities were availed by the petitioner to file its written statement and even cost was imposed by the learned trial Court but despite that the petitioner failed to file written statement and even cost imposed by the learned trial Court was not deposited and as such, there was no option with the learned trial Court but to pass the impugned order whereby request for further opportunity to file written statement made by the petitioner, has been rightly declined and the learned trial Court proceeded ahead with the suit after framing issues on the same very day and posted the case for evidence of the plaintiff.

4. Counsel for respondent No.1 has further submitted that after the passing of the impugned order, the petitioner filed one application (Annexure P-10) for recall of the same and in the meantime, the present revision petition is also filed and application (Annexure P-10) later on, withdrawn on 15.2.2023 during the pendency of the present revision petition as is evident from order Annexure P-16.

5. Counsel for respondent No.1 further submits that the petitioner has not approached this Court with clean hands as he did not disclose about the pendency of the application (Annexure P-10) which was pending before the learned trial Court. So, prayer is made that the present revision petition be dismissed.

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

7. Order 8 Rule 1 CPC prescribed period of 90 days to file written statement. It is worthwhile to mention here that purpose to fix a time schedule for filing written statement is to expedite hearing and not to scuttle

it. Hon'ble Apex Court in **Sambhaji's** case (supra), has held that provision under Order 8 Rule 1 CPC is directory and not mandatory. So, if the Court is of the opinion that written statement is required for just decision of the case, request for extension of prescribed time period may be allowed. Earlier also, Hon'ble Apex Court in **Salem Advocate Bar Association v. Union of India**, 2005 (3) RCR (Civil) 530 had held that by considering the facts and circumstances of the case, time can be given for more than 90 days for filing written statement.

8. In the instant case, counsel for the petitioner has argued that the impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, the defendant-petitioner may be permitted to file written statement in the interest of justice and equity.

9. Counsel for the petitioner further apprised the Court that cost imposed by the learned trial Court was deposited vide receipt (Annexure P-13). He further informed the Court that the suit is at its initial stage as till date, no evidence has been recorded on behalf of the plaintiff. He further submits that written statement is ready for it's filing in the Court concerned.

10. In the instant case, delay may have been caused in filing written statement as certain permission was required to be taken by the concerned official from higher authorities before filing written statement. So, delay in filing of written statement as well as the present petition has been duly explained by the counsel for the petitioner.

11. It is settled that rules of procedure are handmaids of justice and cannot prevail upon the substantial justice. Further, this Court is of the view that as till date, the plaintiff has not examined any witness, no prejudice is going to be caused to him if the petitioner is permitted to file his written

statement.

12. For the foregoing reasons, it is deemed appropriate to grant one last opportunity to the petitioner for filing written statement subject to costs. Accordingly, the present revision petition is allowed and the impugned order is set aside and the petitioner is permitted to place written statement on record of the learned trial Court within 15 days from the date of appearance before the said Court subject to costs of ₹ 10,000/- which is to be paid by the petitioner to the opposite party on the next date fixed in the learned trial Court.

(KARAMJIT SINGH)
JUDGE

July 24, 2023

Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No