

CR-5483-2017 (O&M)

201-A

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5483-2017 (O&M)

Date of decision: February 21, 2023

Munna Lal Gupta

....Petitioner

versus

M/s Green Estate and HRE Plot Holders Association
and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Adarsh Jain, Advocate for the petitioner.

Mr. Arun Kumar Jain, Advocate for respondent No.1.

ARUN MONGA, J. (ORAL)

Present revision petition is against impugned order dated 21.07.2017 passed by learned Civil Judge (Senior Division), Faridabad whereby in a suit for declaration, permanent injunction and possession instituted by respondent No.1, defence of petitioner-defendant No.48 was struck-off.

2. Learned counsel for petitioner submits that vide order dated 08.04.2016 (Annexure P-6) passed by this Court in Civil Revision No.7038 of 2014, petitioner was ordered to be impleaded as defendant in suit in question. Vide impugned order, learned trial Court has erroneously struck off defence of petitioner stating that despite availing repeated opportunities, written statement has not been filed.

3. I have heard learned counsel for parties and perused the case file.

4. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. Prejudice would indeed be caused to petitioner unless afforded an opportunity to file written statement. Trial

in the suit may lead to injustice as there would be no contest in the absence of written statement.

5. Provisions contained in Order VIII Rule 1 CPC though ought to be adhered to but learned Court below could have still permitted petitioner to file written statement, subject to certain penalty as a deterrent. Otherwise also, provisions contained in Order VIII Rule 1 *ibid* have been held to be directory in nature by the Supreme Court in ***Salem Bar Association Vs. UOI, 2005(6) SCC 344***. The Courts should not, therefore, be too harsh to strike off the defense of defendants at early stage.

6. Apart therefrom, in the present case, petitioner was impleaded as defendant No.48 in the pending civil suit pursuant to an earlier round of litigation arising in same very suit which resulted in CR-7038-2014. The grievance as therein was *qua* impleadment of petitioner as a necessary party to the suit proceedings. This Court vide order dated 08.04.2016 (Annexure P-6) directed that petitioner be impleaded as necessary party being defendant No.48 and it was thereafter, that at belated stage, petitioner caused appearance through counsel to file written statement. No doubt, certain delay was caused in the proceedings owing to the belated impleadment of petitioner as defendant, and therefore, twice adjournments were sought to file written statement on the ground that record of the case was not with the counsel representing the petitioner before trial Court as the same had been sent to another learned counsel in the High Court to prepare revision petition and due to delay in receiving file from learned counsel in the High Court, written statement could not be filed. It so appears that default, in any case, was not attributable to petitioner and there was a genuine reason on the part of learned counsel for delay in the preparation of written statement for lack of record.

7. For the foregoing reasons, I deem it appropriate to grant one more opportunity to petitioner/defendant No.48 for filing the written statement, subject

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to costs of Rs.20,000/- payable to respondent No.1/plaintiff. To that extent, impugned order is modified and the revision petition is allowed.

- 8. Disposed of, accordingly.
- 9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 21, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No