

CR-334 of 2022

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

CR-334 of 2022

Date of decision: 04.08.2023

Bhana Ram

.....Petitioner

vs.

Gram Panchayat of Village Dhirana Majra and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Parveen Kumar, Advocate,
for Mr. Abhimanyu Singh, Advocate,
for the petitioner.

Mr. Sunny Namdev, Advocate,
for respondents No.1 to 3.

Mr. Rahul Dev Singh, Addl. A.G., Haryana.

NAMIT KUMAR, J. (ORAL)

1. Instant revision petition has been filed by defendant No.1-petitioner under Article 227 of the Constitution of India impugning the order dated 24.11.2021 passed by the Court of learned Civil Judge (Senior Division), Bhiwani, whereby his defence has been struck off.

2. Briefly stated, facts relevant for the disposal of present revision are that plaintiff/respondents No.1 to 3 filed a suit for declaration to the effect that plaintiffs are the exclusive owners of the new water pipeline and tubewell and its other equipment which is shown in yellow colour in the appended site plan with the plaint and also entitled to use the same exclusively supplying the drinking water in village in Dhirana Majra. It is pleaded in the suit that plaintiff No.1 is the Sarpanch of Village Gram Panchayat Dhirana Majra, Bhiwani, Tehsil and District Bhiwani and

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plaintiffs No.2 and 3 are the inhabitants of Village Dhirana Majra and also the members of Gram Sabha. Defendant No.1-petitioner is the resident of Village Dhirana Kalan, Tehsil and District Bhiwani. It is further pleaded that revenue record and panchayats of both the villages are separate. In village Dhirana Majra, drinking water is supplied through tubewell, which is constructed, owned and possessed by the Gram Panchayat of Village Dhirana Majra. Gram Panchayat, Dhirana Majra, also installed new pipeline for watering for its inhabitants/villagers, shown in the site plan in yellow colour attached with the plaint. Thus, Gram Panchayat of village Dhirana Kalan, villagers of Dhirana Kalan and defendant No.1 have no concern or connection with the abovesaid new pipeline. In pursuance to notice, petitioner put in appearance through counsel on 18.01.2020. Vide impugned order dated 24.11.2021, defence of petitioner has been struck off due to non-filing of written statement despite availing number of opportunities. Hence, this petition.

3. Learned counsel for the petitioner contended that delay in filing written statement by the petitioner is not intentional, rather bona fide one. He further contended that petitioner could not file his written statement as the case was adjourned thrice due to Covid-19. The learned counsel further contended that one opportunity may be given to the petitioner to file written statement which is necessary for just and proper adjudication of the suit.

4. I have heard learned counsel for the petitioner and perused the record.

5. Through this petition, the petitioner seeks permission to file

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written statement. It is correct that proviso to Order 8 Rule 10 of CPC lays down that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the Court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order 8 Rules 1 and 10 CPC, the doctrine of harmonious construction is required to be applied. The effect would be that under Order 8 Rule 10 of CPC, the Court has discretionary power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order 8 Rule 1 of CPC. Moreover, the said provision being rule of procedure has to be held to be directory and not mandatory in nature. This provision has to be applied with some flexibility and not with rigidity or inflexibility. Rules of procedure are handmaid to the administration of justice and are meant to meet the ends of justice and not to thwart or obstruct the same. In ***Salem Advocate Bar Association, Tamil Nadu vs. Union of India AIR 2005 Supreme Court 3353***, it has been held by the Hon'ble Supreme Court that in the facts and circumstances of a given case, more than 90 days can be granted for filing written statement. In the present case, this Court is of the considered opinion that ends of justice would be met if the petitioner is allowed to file written statement in trial Court on date fixed. However, plaintiff/respondents No.1 to 3 shall also

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be given an effective opportunity to file replication to written statement of petitioner, if they so desire.

6. For the reasons stated above, the impugned order dated 24.11.2021 (Annexure P-13) is set aside subject to payment of costs of Rs.5,000/- to be deposited with the District Legal Services Authority, Bhiwani. The revision petition is allowed in the aforementioned terms.

04.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No