

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-922-2023 (O&M)

Date of decision: February 10, 2023

Gurbhej Singh and another

....Petitioners

versus

Balwinder Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vinay Kumar, Advocate for the petitioners.

ARUN MONGA, J. (ORAL)

Present revision petition is against impugned order dated 11.01.2023(Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Batala, in Civil Suit for permanent injunction titled "Balwinder Singh and another versus Gurbhej Singh and another", whereby, defence of the petitioner/defendants, was struck off for want of written statement.

2. Learned counsel for petitioners submits that petitioner/defendants were in the process of collecting documents to file written statement and accordingly, time was sought to do the needful, on 22.09.2022 and 22.11.2022. Thereafter, on 11.01.2023, a short adjournment was again sought for filing written statement. However, vide impugned order, learned Court below struck-off defence of petitioner/defendants merely on the ground that despite availing statutory period of 90 days, written statement has not been filed.

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

4. I have heard learned counsel for the petitioners and perused the case file.

5. 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 petitioners unless afforded an opportunity to file written statement. Trial in the suit may lead to a futile exercise as there would be no contest in the absence of written statement.

6. Provisions contained in Order VIII Rule 1 CPC though ought to be adhered to but learned Court below could have still permitted petitioners 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.

7. For the foregoing reasons, I deem it appropriate to grant one more opportunity to the petitioner/defendants for filing the written statement, subject to costs of Rs.5,000/- payable to respondent/plaintiffs. To that extent, impugned order is modified and the revision petition is allowed, dispensing with notice to respondents.

8. Disposed of, accordingly.

9. In the parting, I may hasten to add here that having seen impugned order dated 11.01.2023, it is borne out that same has been passed in a very casual manner by learned trial Court, inasmuch as neither it is recorded as to when was service effected on defendants and when was appearance caused for first time by learned counsel for them, and what was the number of days of delay in filing written statement as against permissible period of 90 days.

Without recording any such things, trial Court has simply said that record reveals that three opportunities had since been granted, therefore, defendants are not entitled to any further opportunity. No doubt, three opportunities were granted, but trial Court ought to have recorded its reasons prior to striking-off defence, which has been done in a most mechanical manner, as noted above. Be that as it may, since revision petition has already been disposed of as above, this Court would refrain to comment further on the impugned order.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 10, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No