

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-943-2023 (O&M)

Date of decision: February 10, 2023

Rajbir Singh

....Petitioner

versus

Charanjit Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Umesh Aggarwal, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)

Present revision petition is against impugned order dated 03.03.2020(Annexure P-2) passed by learned Civil Judge (Junior Division), Amritsar in a Civil Suit for permanent injunction titled “Charanjit Singh and another versus Rajbir Singh and others”, whereby defence of petitioner/defendant No.1 and pro forma respondents No.3 to 5/defendants No.2 to 4, was struck off for want of written statement.

2. Learned counsel for petitioner submits that due to negligence on the part of counsel for petitioner-defendant No.1 before Court below, written statement could not be filed. Defence of petitioner-defendant No.1 was struck off on 03.03.2020 and said order was never conveyed to petitioner-defendant.

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 petitioner and perused the case file.

5. Ordinarily this Court would have refrained to interfere. However, given peculiar circumstances caused by intervening pandemic period during which defence of petitioner-defendant was struck-off and coupled with assertions of learned counsel that counsel representing him, either due to reasons of pandemic or otherwise, as the case may have been, could not inform regarding striking off his defence. Therefore, defendant No.1 could not take any steps to file application prior to his knowledge owing to which delay took place in filing written statement. That apart, seeing the nature of suit, I am of the view that since it is for a decree simpliciter for permanent injunction, no serious prejudice would be caused to respondents No.1 and 2/plaintiffs in case, petitioner-defendant No.1, at this stage, who is sole contesting defendant (since other defendants have been proceeded *ex parte*) is accorded one opportunity to file his written statement in defence.

6. 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.

7. 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. 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 defendant at early stage.

8. For the foregoing reasons, I deem it appropriate to grant one more opportunity to petitioner/defendant No.1 for filing the written statement, subject to costs of Rs.10,000/- payable to respondents No.1 and 2/plaintiffs. To that extent, impugned order is modified and the revision petition is allowed, dispensing with notice to respondents.
9. Disposed of accordingly.
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