

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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C.R. No.1648 of 2023

Date of decision: 28.03.2023

Vinod Kumar

....Petitioner

V/s

Kailasho Devi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Aditya Jain, Advocate for the petitioner.

VIKAS SURI, J. (Oral)

The grievance raised in this petition preferred under Article 227 of the Constitution of India is to the order dated 02.01.2023 passed by the trial Court whereby further opportunity to file written statement and reply to stay application was not granted and defence of defendant No.1-petitioner was struck-off.

Learned counsel for the petitioner submits that the parties to the suit are members of the same family. The petitioner (defendant No.1) and defendant No.2, who is represented by legal representatives, are real brothers i.e. the son of plaintiff No.1 and brother of plaintiff Nos.2 and 3. It is pleaded that the brothers in-law of plaintiff-respondent Nos.2 and 3 were keeping a bad eye on the land in dispute after the death of the father of the petitioner, who died on 04.12.2013 i.e. more than 9 years prior to the date of institution of suit. The suit for declaration and permanent injunction as consequential relief *inter alia* raised challenge to the relinquishment deed dated 24.09.2013 and the resultant mutation being No.2259/29.04.2014. Notice of the suit was issued to the defendants. Notice sent to the LRs of

defendant No.2 was not received back served or otherwise and as such, fresh notice was issued to the said legal representatives for the next date. However, defendant No.1-petitioner put in appearance and sought time for filing written statement and reply to the stay application. Vide order dated 15.07.2022, the parties were directed to maintain *status-quo* regarding alienation till filing of written statement and reply to the stay application. The legal representatives of defendant No.2 were again not served and fresh notice was issued to them as such. Defendant No.1-petitioner also sought more time for filing written statement and reply to stay application and accordingly, the matter was adjourned to 02.01.2023. It is submitted that the interest of defendants is common and the petitioner (defendant No.1) was waiting for the opportunity to file a joint written statement. The notices sent to the legal representatives of defendant No.2 were served upon their relatives but none put in appearance on their behalf. They were proceeded against *ex-parte*. In view of the same, the petitioner had sought one more opportunity to file his written statement and reply to stay application. However, the same was not granted and vide impugned order 02.01.2023 (Annexure P-2), defence of defendant No.1-petitioner was struck off.

Learned counsel for the petitioner pleads that only one more opportunity was required for filing the written statement and reply to stay application, which should have been granted in view of the fact that the case was pending for service of the other defendants whose interest is common with that of the petitioner. However, the date for which the legal representatives of defendant No.2 were served, on the same date the defence of the petitioner was also struck off. It is further submitted that the instant

suit not being a commercial Court matter, the provisions of and time schedule contemplated by Order 8 Rule 1 CPC were not mandatory and as such the Court had the jurisdiction to exercise its discretion to condone the delay, if any, for filing the written statement.

It is well settled that the provisions of Order 8 Rule 1 CPC are directory in character and not mandatory inasmuch as they pertain to non-commercial Court matters and the civil Court is not divested of its discretion to grant extension of time for filing written statement beyond the period of 30/90 days stipulated therein. The trial Court was thus, required to exercise its jurisdiction after exercising due circumspection keeping in view the totality of facts and circumstances of the case.

It is borne out from the record that the proceedings are at the initial stage and the service upon the remaining defendants, i.e. LRs of defendant No.2 was taken to be complete on the date of passing of the order striking off the defence of the petitioner. It is submitted that there is no material on record to even remotely suggest that there is an attempt on part of defendant-petitioner to engage in dilatory tactics.

In the present case, it is shown from interlocutory orders reproduced in the body of the petition that defendant No.1-petitioner was granted only two opportunities for filing the written and reply to the stay application and that too over the period when fresh notice was issued to legal representatives of defendant No.2. The trial Court has not taken into consideration the aforesaid aspect and in a routine manner has not granted another opportunity, which could be subject to compensatory costs to the plaintiffs.

In *Bharat Kalra vs. Raj Kishan Chhabra, 2022 SCC OnLine SC 613*, while considering the delay in 193 days in filing the written statement, the Apex Court while allowing the Civil Appeal held that the said delay could be compensated with costs but denying the benefit of filing the written statement is unreasonable and thus ordered taking on record the written statement.

In light of the above discussion, defendant No.1-petitioner is liable to be granted one more opportunity to file his written statement, failing which he would suffer irreparable loss that in turn would result in miscarriage of justice. Moreover, for complete adjudication between the parties and in the interest of justice, it is expedient that there is a contested trial instead of one of the parties being handicapped on account of striking out the defence.

In the totality of circumstances and peculiar facts of the present case, the instant petition is being disposed of without issuing notice to the respondents, to avoid any further delay in the proceedings as well as additional expenses that the plaintiff-respondents would have to incur to defend the present proceedings.

Accordingly, the impugned order dated 02.01.2023 (Annexure P-2) is set-aside and the instant revision petition is disposed of by granting one last effective opportunity to file written statement, subject to payment of costs in the sum of Rs.15,000/- to be paid to the plaintiff-respondents.

It is, however, made clear that in the event of default by the petitioner in paying the costs or filing of the written statement/reply to stay

application, no further opportunity is liable to be granted for the said purpose and his defence shall be deemed to be struck-off.

This revision petition is disposed of in aforesaid terms.

(VIKAS SURI)
JUDGE

March 28, 2023
Ajay

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