

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

**CR-1238-2023 (O&M)
Date of decision: 23.02.2023**

Nachhattar Singh and another

...Petitioners

versus

Darshan Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jagmeet Singh Moudgill, Advocate
for the petitioners.

ARUN MONGA, J. (ORAL)

CM-3582-CII-2023

For reasons stated in the application, same is allowed as prayed for,
subject to all just exceptions.

Main case (O&M)

Present revision petition is to set aside impugned order dated 24.01.2023
(Annexure P-11) passed by learned Additional Civil Judge (Senior Division), Sunam
whereby in a suit instituted by respondent No.1-plaintiff for permanent injunction,
defence of petitioners-defendants No.4 & 5 was struck off.

2. Learned counsel for the petitioners-defendant Nos.4 & 5, *inter alia*,
contends that when petitioners had appeared through counsel, the matter was
adjourned for filing written statement and thereafter the matter was repeatedly
adjourned on account of intervening pandemic period. Ultimately, the matter was
adjourned to 09.02.2022 and then to 21.03.2022 for filing written statement and on
21.03.2022 respondent No.1-plaintiff moved an application for striking off the
defence of petitioners. Subsequently, on 02.05.2022 the matter was adjourned to
07.07.2022 and on 07.07.2022, the reply to application for striking off defence was

filed and the matter was adjourned to 12.08.2022 for consideration of application. Thereafter, the matter was repeatedly adjourned on account of the fact that settlement talks were going on between the parties. On 12.11.2022, the matter was put up before National Lok Adalat. However, due to some difficulty both the parties did not appear before National Lok Adalat though the talks of compromise were still going on between the parties. During this interregnum, the matter was repeatedly adjourned and when on 24.01.2023 case was fixed for awaiting the compromise between the parties, Ld. Trial Court vide impugned order struck off the defence of petitioners.

2.1. Learned counsel for petitioners further submits that impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, they may be permitted to file their written statement in the interest of justice and equity.

2.2. Learned counsel further contends that rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. According to learned counsel, no prejudice would indeed be caused to plaintiff if the revisionists are permitted to file their written statement.

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

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

5. Perusal of record reveals that defendants No.4 and 5 caused appearance through their counsel sometime in February-2021 and thereafter effective proceedings in the Court could not take place due to intervening pandemic period. On resumption of hearing, it appears that attempt was made between the parties to settle the matter amicably including referring the case to Lok Adalat. It was in these circumstances that certain delay took place in filing the written statement within stipulated period.

While on one hand, parties were indulging in the compromise talks, on the other hand,

it does appear that an application was filed by plaintiff to strike off the defence of defendants No.4 & 5 (petitioners herein) on the ground that they have failed to file written statement. Reply was filed to the same *inter alia* on the ground that compromise talks were going on and since petitioners did not want to unnecessarily prejudice plaintiff by taking adversarial defence, the written statement was not filed. Ld. Trial Court adjourned the matter for 16.01.2023 stating that the compromise was awaited between the parties and posted the matter on 24.01.2023. However, on 24.01.2023, without giving any opportunity to petitioners, their defence was struck off. Hence, the revision.

6. I am of the view that provisions contained in Order 8 Rule 1 CPC, ordinarily ought to be adhered to, but learned Trial Court could have permitted to file written statement subject to certain penalty as a deterrent. Provisions contained in Order 8 Rule 1 CPC, *ibid*, have been held to be directory in nature by the Supreme Court in *Salem Bar Association Vs. UOI, 2005(6) SCC 344*. Courts should not, therefore, be too harsh to strike off the defence of defendants at very early stage.

7. Learned counsel for petitioners undertake to file their written statement on or before the next adjourned date.

8. Keeping in view the facts and circumstances of the case, I deem it appropriate to grant one more opportunity to petitioners for filing their written statement subject to costs of Rs.10,000/- to be paid to plaintiff, which shall be a condition precedent. If the costs are not paid, as directed, the impugned order shall stand restored. To that extent, the impugned order is modified and the revision petition is allowed.

(ARUN MONGA)
JUDGE

February 23, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No