

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-1434-2023 (O&M)

Date of decision: 03.03.2023

Meera Devi (Deceased) through LRs.

...Petitioner(s)

Versus

Smt. Kavita @ Kavita Lakra

...Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

**Present:** Mr. K.L. Saini, Advocate  
for petitioners.

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**ARUN MONGA, J. (ORAL)**

Present revision petition is to set aside impugned order dated 17.12.2022 (Annexure P-10) passed by learned Civil Judge (Junior Division), Gurugram, whereby in a suit instituted by respondent-plaintiff for specific performance, defense of petitioner-defendant(s) was struck off.

2. Learned counsel for petitioner-defendant(s), *inter alia*, contends that when petitioner(s) had appeared through counsel, the matter was adjourned for filing written statement and thereafter the matter was repeatedly adjourned on account of requests of learned counsel for petitioner(s) and even subject to payment of costs of Rs.1000/- on two occasions. Ultimately, the matter was adjourned to 17.12.2022 and adjournment was again sought for filing written statement and therefore, vide impugned order, Ld. Trial Court struck off the defense of petitioner(s) and to file reply to stay application.

2.1. Learned counsel for petitioner(s) 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 petitioners are permitted to file their written statement.

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

4. I have heard learned counsel for the petitioner(s) and gone through the case file.

5. Perusal of record reveals that learned counsel for defendant(s) was not feeling well on the date fixed i.e., 17.12.2022 and was advised bed rest for three days. Today, learned counsel submits that written statement and reply to stay application are ready and he needs just one opportunity to do the needful.

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 defense of defendant at very early stage.

7. Learned counsel for petitioner(s) undertakes 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 petitioner(s) for filing their written statement subject to costs of Rs.5,000/- 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

March 03, 2023  
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No