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

**CR No.1643 of 2023
Date of Decision: 16.03.2023**

Bakhsh Devi

..... Petitioner

Versus

Shobha Rani

..... Respondent

CORAM: HON'BLE MR. JUSTICE SANJIV BERRY

Present: Mr. Vikramjeet Singh, Advocate for
Mr. Manoj K. Sharma, Advocate,
for the petitioner.

SANJIV BERRY, J. (ORAL)

The present revision petition has been filed against the order dated 27.10.2022 (Annexure P-2) passed by learned Civil Judge (Junior Division), Hoshiarpur whereby the defence of the petitioner/defendant was struck off.

2. The impugned order dated 27.10.2022 has been assailed by the petitioner/defendant claiming that respondent/plaintiff filed a suit for grant of permanent injunction restraining the petitioner/defendant herself or through her agent from dispossessing the respondent/plaintiff out of the house property measuring 6 Marlas, Annexure P-1. On 28.09.2021, petitioner/defendant has appeared before learned Civil Judge (Junior Division), Hoshiarpur and the case was adjourned for filing written statement.

3. It is contended by learned counsel for the petitioner/defendant that she is an old lady and mother in law of the respondent/plaintiff and has limited resource, therefore she could not hand over the required documents to her counsel, which could enable him to file written statement.

4. The learned counsel for the petitioner/defendant further contended that petitioner/defendant hand over the entire record to her counsel on 25.10.2022 but the written statement could not be filed on 27.10.2022 and the learned Civil Judge (Jr. Division), Hoshiarpur vide order dated 27.10.2022 (Annexure P-2), struck off the defence of the petitioner/defendant and framed issues, without granting opportunity to file written statement.

5. Learned counsel for the petitioner/defendant prayed that petitioner/defendant will suffer irreparable loss by not giving opportunity to contest the petition and as such prayed that he may be granted one opportunity to file the written statement before the learned Civil Judge (Jr. Division), Hoshiarpur.

6. Considering the submissions made by learned counsel for the petitioner and on perusal of the interim orders passed by learned Civil Judge (Jr. Division) Hoshiarpur, it transpires that the petitioner had appeared in the Court of learned Civil Judge (Jr. Division), Hoshiarpur, on 28.09.2021, and thereafter the matter was adjourned to for different dates for filing of the written statement and finally on 13.09.2022 the case was adjourned to 27.10.2022 for filing written statement subject to last opportunity and payment of ₹200/- as cost and on that day the defence of the defence of the petitioner/defendant was struck off vide the impugned order dated

27.10.2022 Annexure P-2 and the learned Civil Judge (Jr. Division) Hoshiarpur proceeded to frame the issues in the case and posted the matter for evidence of the plaintiff. It is evident from the zimney orders that now the case is fixed for 03.04.2023 for the evidence of the plaintiff.

7. During the course of the arguments the learned counsel for the petitioner/defendant has relied upon the judgment cited as ***Civil Appeal No. 3788 of 2022 (@SLP(C) NO. 63 of 2022) titled as Bharat Kalra vs. Raj Kishan Chabra, M/s. Videocon D2h Ltd And Ors vs. Sharvan Kumar, Law Finder DocId#906791 and Om Parkash Vs. Jogi Samaj Sudhar Society and others, Law Finder DocId#571399516.***

8. From the perusal of the judgments referred above, it is settled preposition that the rules of procedure are handmaid and is intended to meet ends of justice, therefore, cause of justice cannot be subverted and cannot be thrown on the threshold of technicalities. It is further laid down therein that satisfaction of the Court for granting indulgence in terms of extension of time, is *sine qua non* for the relief to be granted and in exceptional circumstances the Court can extend the time for filing of written statement.

9. It is further, observed by Hon'ble Apex Court in the judgment ***Bharat Kalra's (supra)*** that the delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing of the written statement is unreasonable.

10. Therefore, considering the facts and circumstances of the present case, it is found to be justified and in the interest of justice if one last opportunity is granted to the present petitioner to file written statement.

The case is fixed before learned Civil Judge (Jr. Division), Hoshiarpur on

03.04.2023.

11. Relying the preposition laid down by Hon'ble Apex Court and judgments cited (supra) to the facts and circumstances of the present case, it is deemed appropriate and in the interest of justice, if one opportunity is granted to the petitioner/defendant to file the written statement and in that event the plaintiff could very well be compensated with payment of costs.

12. Resultantly, without commenting upon the merits of the case, the impugned order dated 27.10.2022 (Annexure P-2), in as much as it had struck off the defence of the petitioner/defendant is set aside and the learned Civil Judge (Jr. Division), Hoshiarpur is directed to grant one effective opportunity to the petitioner/defendant to file the written statement, subject to payment of ₹5,000/- as costs to be paid to the respondent/plaintiff.

13. Petition stands disposed of.

16.03.2023

Gyan

(SANJIV BERRY)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |