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

CR No.1596 of 2023 (O&M)

Date of Decision: 15.03.2023

Ms/ Security Defence Systems and Another

..... Petitioners

Versus

Abhishek Gupta

..... Respondent

CORAM: HON'BLE MR. JUSTICE SANJIV BERRY

Present: Mr. Varun Dhawan, Advocate,
for the petitioners.

SANJIV BERRY, J. (ORAL)

The present revision petition has been filed against the order dated 23.11.2022 (Annexure P-1) passed by learned Rent Controller, Chandigarh, whereby the defence of the petitioners was struck off.

2. The impugned order dated 23.11.2022 has been assailed by the petitioner claiming that he is tenant in the rear half portion of the property, which he had taken on rent in the year 1992 from one Mohinder Singh and have been paying rent regularly to him. The respondent had filed rent petition, Annexure P-2, and on receipt of notice the petitioner appeared and filed application under Section 10 of East Punjab Urban Rent Restriction Act (hereinafter referred to as 'Act') directing the respondent to open the common washroom of first floor of the SCO 63, Sector 46, Chandigarh and to allow him uninterrupted access to said common washroom. The reply to this application was filed by respondent landlord but the learned Rent

Controller, Chandigarh did not hear the arguments on the said application.

3. It is contended by learned counsel for the petitioners that petitioners had filed application under Section 10 of the Act, wherein reply had also been received and under the presumption that the matter is pending for consideration of the application, he could not file the written statement on earlier dates and in the meanwhile the petitioner as well as his wife suffered COVID-19 in the month of August, 2022. He submitted that on 23.11.2022 the date fixed before the learned Rent Controller, Chandigarh, written statement could not be filed as certain documents have to be annexed which the petitioner could not bring it being the last opportunity, the learned Rent Controller had passed impugned order striking of defence vide Annexure P-1.

4. The learned counsel for the petitioners prayed that the petitioners will suffer irreparable loss and injuries 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 Rent Controller, Chandigarh.

5. In support of his contention learned counsel for the petitioners relied upon the judgments rendered in ***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***.

6. Considering the submissions made by learned counsel for the petitioners and perusing the impugned order as well as interim orders passed by learned Rent Controller, Chandigarh, it transpires that petitioner appeared before the learned Rent Controller on 05.04.2022 and thereafter

the case was adjourned to 30.04.2022 for filing of written statement and power of attorney. On 30.04.2022 the matter was again adjourned to 27.05.2022 for the same purpose. On 01.08.2022 the power of attorney was filed by the present petitioners along with a application under Section 10 of the Act. The matter was listed for 16.08.2022 for filing reply to the said application. On 16.08.2022 the reply to application was filed and the case was fixed for 25.08.2022 for arguments under Section 10 of the Act. On 01.09.2022 when the matter was fixed for filing reply to the main case and arguments on the application under Section 10 of the Act, but due to non appearance of the counsel on behalf of the present petitioner, they were proceeded ex-parte and the case was adjourned to 06.10.2022 for ex-parte evidence.

7. On 06.10.2022 the petitioner moved an application for setting aside of the ex-parte proceedings which was allowed subject to payment of ₹2000/- as costs and the case was adjourned to 11.11.2022 for filing of written statement and payment of costs, and again on 23.11.2022 for the said purpose, subject to last opportunity. On the said date the cost was paid, however the request moved by the petitioner through application under Order 7 Rule 14 and Order 5 Rule 2 CPC were declined and on the failure of the petitioner to file reply to main petition their defence was struck of. Therefore, it is evident from the perusal of the zimney orders that on the adjourned dates the case had been mainly fixed for the consideration on the application under Section 10 of the Act and then for payment of costs on account of setting aside of the ex-parte proceedings. Infact, the case was fixed for main reply effectively for 27.05.2022, 11.11.2022 and 23.11.2022,

being the last opportunity.

8. I have gone through the judgments referred to above and there is no dispute qua the fact 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. 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 stated to be fixed before learned Rent Controller, Chandigarh on 17.03.2023.

10. For the reasons mentioned above, the revision petition is allowed and the impugned order dated 23.11.2022 (Annexure P-1), in so far as the defence of the petitioners were struck off, is set aside. The learned Rent Controller, Chandigarh is directed to grant one last opportunity to the petitioner to file the written statement, subject to payment of ₹10,000/- as costs to be paid to the respondents. Any observation made above shall not effect the merits of the case.

11. Petition stands disposed of.

15.03.2023

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(SANJIV BERRY)
JUDGE

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