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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: March 17, 2023

Deputy Director Panchayat Office, Patiala

....Petitioner

versus

M/s World of Sports and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Dinesh Kumar, Advocate for the petitioner.

Mr. Vishnav Gandhi, DAG Punjab.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 31.08.2022 passed by learned Civil Judge (Junior Division), Jalandhar, whereby defence of defendant-petitioner, was struck off on account of non-filing of written statement.

2. Learned counsel for the petitioners contends that plaintiff-respondent No.1 filed suit against defendants for recovery of Rs.1,41,792/- along with interest @ 24% per annum till its realization. He contends that on 12.11.2021, the then BDPO, Patiala had appeared and requested for time to file written statement. But somehow either due to transfer of said officer or due to some communication gap with counsel, written statement could not be filed. Vide impugned order dated 31.08.2022, defence of defendants was struck off.

3. Given the nature of order being passed, there is no necessity to issue notice to respondent No.1 as no serious prejudice would be caused to him. Notice to respondent No.1 is thus dispensed with.

4. I have heard learned counsel for petitioner and perused the case file.

5. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties if the other party can be

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compensated by costs. Prejudice would indeed be caused to petitioner unless afforded an opportunity to file the written statement.

6. Provisions contained in Order VIII Rule 1 CPC though ought to be adhered to but learned Court below could have still permitted petitioner to file written statement, subject to certain penalty as a deterrent. Otherwise also, provisions contained in Order VIII Rule 1 *ibid* have been held to be directory in nature by the Supreme Court in *Salem Bar Association Vs. UOI, 2005(6) SCC 344*. The Courts should not, therefore, be too harsh by disallowing the filing of written statement.

7. For the foregoing reasons, I deem it appropriate to grant one opportunity to petitioner/defendant for filing written statement, subject to costs of Rs.5,000/- payable to plaintiff/respondent No.1. To that extent, impugned order is modified and the revision petition is allowed.

8. Disposed of, accordingly.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 17, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No