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

**CM-9288-CII-2023 IN/AND
CR-881-2021 (O&M)
Date of Decision: 18.05.2023**

Madan Gopal Sharma

..... Petitioner

Versus

Sanjay Kumar Attri and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Amandeep Saini, Advocate, for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

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This is an application for preponing the date of hearing in the main case.

For the reasons mentioned in the application, the same is allowed as prayed for and the date of hearing in the main case is preponed today itself for final hearing.

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This is a petition filed under Article 227 of the Constitution of India praying for setting aside the impugned order dated 08.11.2019 passed by the Additional Civil Judge (Senior Division), Dera Bassi, whereby the defence of the petitioner/defendant has been struck off by not granting the petitioner/defendant any further opportunity to file written statement.

It is submitted by the learned counsel for the petitioner that the petitioner is the contesting defendant in the suit for damages filed by the respondent/plaintiff. In the said suit, after notice, the present petitioner/

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defendant had filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground of non-payment of the appropriate court fee. However, that application had been pending for a considerable time and the said application was dismissed on 06.09.2019. Against the said dismissal order, the petitioner has filed a revision petition and the same is still pending. Learned counsel has further submitted that after the dismissal of the aforesaid application under Order 7 Rule 11 CPC, the petitioner/defendant has availed only one opportunity to file the written statement; and even on that day, there was no-work day declared by the Bar Association. Therefore, the petitioner/defendant had not got proper opportunity to file the written statement. It is further submitted that since the petitioner is the contesting defendant in the suit, therefore, his case would be prejudiced beyond redemption, if he is not permitted to file the written statement and to defend the suit accordingly.

In view of the nature of the order being passed in this case, this Court does not see any requirement of issuing notice to the respondents; at this stage.

Having heard learned counsel for the petitioner and having perused the case file, this Court finds that after service, the petitioner/defendant had been granted umpteen number of opportunities, on which he could have file the written statement. However, he did not avail those opportunities. Instead, he filed an application under Order 7 Rule 11 CPC and kept waiting for decision of the same. The written statement could have very well been filed during pendency of that application. Therefore, this Court does not find any *ex facie* impropriety with the course of action adopted by the trial Court.

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However, the law of procedure is handmade to advance the interest of the substantial justice. The interest of the substantial justice demands that the parties to the *lis* should be heard-out to the maximum possible extent instead of restricting the hearing to the parties. Moreover, the petitioner is the contesting defendant of the suit, therefore, his case would be adversely affected, if he is not permitted to file the written statement and to contest the suit accordingly. Therefore, it would not be inappropriate, if the petitioner is granted one more effective opportunity to file the written statement, and thereafter, to contest the suit accordingly, however, by putting him under an appropriate financial burden; so as to make him realize his mistake in wasting time of the Court.

In view of the above, the present petition is allowed and the impugned order passed by the Trial Court is set aside. The Trial Court is directed to grant one effective opportunity to the petitioner to file the written statement and thereafter, to contest the suit accordingly, however, subject to payment of Rs.10,000/- as costs; to be deposited by the petitioner with the Institute for the Blinds, Sector 26, Chandigarh, within a period of 15 days from today.

However, it is clarified that the Trial Court shall grant the aforesaid opportunities to the petitioner only on his production of the receipt of the costs having been deposited by the petitioner, as ordered above.

(RAJBIR SEHRAWAT)
JUDGE

18.05.2023
adhikari

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No