

119

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

CR-2025-2023 (O&M)

Date of Decision: 29.03.2023

Karnail Singh

...Petitioner

Versus

Saranjit Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Vivek Singla, Advocate
for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 21.12.2022 (Annexure P-1) passed by Ld. Civil Judge (Sr. Division), Barnala, whereby the defence of petitioner/defendant was struck off.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Respondent/plaintiffs filed a civil suit for possession against petitioner, who through his counsel appeared in the suit and the same was fixed for 03.07.2018 for filing written statement. Thereafter, petitioner moved an application (Annexure P-4) under Order 7 Rule 11 CPC for rejection of plaint on 27.07.2018. Respondents filed a reply (Annexure P-5) thereto on 01.11.2018. Subsequently, vide order dated 10.10.2022 (Annexure P-6), the application filed by petitioner under Order 7 Rule 11 CPC was dismissed. After the dismissal of application, the suit was fixed for 21.10.2022 for filing written statement and thereafter vide order dated 16.12.2022, petitioner was granted last opportunity to file his written statement. Vide impugned order dated 21.12.2022 (Annexure P-1), since no written statement was filed, the defence of petitioner was struck off.

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

4. Given the number of opportunities already taken by petitioner to file written statement, apart from having jumped the statutory period of 90 days, as prescribed under CPC, ordinarily this Court would not have interfered in the impugned order. However, the petitioner deposed on affidavit that owing to some miscommunication between him and his counsel he was under the impression that application under Order 7 Rule 11 CPC filed by him is since pending, it is only after the decision of the same that he has to file the written statement. It was later that he discovered that his application had been dismissed on 10.10.2022 and thereafter the matter was adjourned on four occasions by giving short dates of hearing for filing his written statement.

5. Learned counsel for petitioner submits that petitioner has tendered an unconditional apology *qua* his neglect caused due to miscommunication.

6. Accepting the aforesaid to be *bona fide* mistake on petitioner's part, I deem it just and proper to direct Ld. Trial Court to proceed further with trial while granting one opportunity to petitioner/ defendant to file his written statement.

7. Revision stands disposed of and impugned order is set aside accordingly.

8. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 29, 2023
ashish

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No