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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on : 21.08.2023

Hakam Chand @ Hukam Chand

. . . Petitioner(s)

Versus

Arun Khanna

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. J.S. Gill, Advocate
for the petitioner(s).

SANJAY VASHISTH, J. (Oral)

1. Present revision petition has been preferred by the petitioner (sole defendant) – Hakam Chand @ Hukam Chand, challenging the impugned order dated 10.05.2022 (P-3), passed by learned Civil Judge (Jr. Divn.), Ellenabad, District Sirsa, whereby, defence of the petitioner/defendant has been ordered to be struck off in case CIS No.CS/477/2021, CNR No.HRSIB00005262021, titled as, “Arun Khanna vs. Hakam Chand @ Hukam Chand”.

2. Learned counsel for the petitioner submits that suit for recovery, filed by the respondent (sole plaintiff), is pending before the Court of Civil Judge (Jr. Divn.), Ellenabad, District Sirsa. In the said suit, defendant (petitioner herein) had appeared before the trial Court after coming to know of the proceedings before it.

3. Learned counsel further submits that only two opportunities were granted to the petitioner/defendant for filing written statement. He further submits that as per order dated 05.04.2022, which was passed by the learned Trial Court in the presence of both the parties, the factum of

compromise was also recorded.

Thus, learned counsel for the petitioner/defendant submits that for *bona fide* reason, written statement could not be filed within time granted by the Court. He further informs the Court that the next date fixed before the trial Court is 12.09.2023 for the purpose of recording statements of the witnesses from plaintiff side, and till date, no witness has been examined. Thus, giving of one chance to the petitioner/defendant to file written statement prior to that would not amount to wastage of time of the Court in any manner.

Therefore, he requests that if one more opportunity is granted to petitioner/defendant to file written statement, subject to the payment of some cost also, requisite written statement shall be filed by the petitioner/defendant within the granted time.

4. Learned counsel for the petitioner also relies upon the order dated **20.05.2022**, passed by the Coordinate Bench of this Court in **CR-1660-2020**, titled as, “**Paro and others vs. Mahindo**”, wherein, in the similar circumstances, to avoid miscarriage of justice, the order of striking off defense was set-aside, and opportunity of filing of written statement was granted. Relevant part of the order dated 20.05.2022, says as under:-

“ The provisions of Order 8 Rule 1 of the CPC no doubt are directory in nature, however, at the same time the Courts must exercise their discretion to condone the delay, if any, in filing the written statement after exercising due circumspection and in case there appears to be an attempt on the part of the defendant to engage in dilatory tactics, the Courts should nip the same unhesitatingly.

Adverting to the case in hand, the petitioners were granted four opportunities to file their written statement, however, they failed to do so.

Be that as it may, if the petitioners are not granted one more opportunity to file their written statement, they would suffer irreparable loss which in turn would result in miscarriage of justice. Therefore, for just and proper adjudication of the case, this Court

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deems it appropriate to grant one last effective opportunity to the petitioners to file their written statement.

In the wake of the above, without issuing notice to the respondent, to avoid any further delay as well as expenses which she shall have to incur to defend these proceedings, the impugned order dated 21.11.2019, is set aside. The instant revision petition is allowed in the following terms:-

- 1. The petitioners are granted one last effective opportunity to file their written statement.*
- 2. In the event of default by the petitioners, the case shall not be adjourned any further for filing of their written statement and consequently their defence shall be deemed to be struck off.*
- 3. This, however, shall be subject to payment of costs in the sum of Rs.5,000/- to be paid to the respondent which shall be a condition precedent.”*

5. Even this Court, in similar circumstances, has passed a judgment in **Gigraj @ Giga Ram Jain v. Ram Kumar and others, 2023(3) RCR(Civil) 698 : Law Finder Doc Id # 2265730**, whereby, subject to payment of some cost, one opportunity was granted to the defendant (petitioner therein) to file written statement.

6. I have heard learned counsel for the petitioner/defendant and perused the relevant material on record.

7. This Court does realize that for deciding the petition, there is any need to call for the respondent/plaintiff for the issue involved herein. Rather, same would be sheer wastage of time for no gain to any of the party to the *lis*. Once written statement of the defendants (petitioner herein), is available on record, it would be convenient for the Court also to decide the controversy involved.

8. For deciding the small issue raised in the present petition, to the mind of this Court, all the details are not required to be examined minutely. As per the view point of this Court, it is always good for the Court to find out solution by deciding the controversy after inviting response from all the

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concerned parties. Court cannot function on the principle of technicalities or in a specified & mechanized manner. Therefore, it would always be fair to impart justice after giving reasonable opportunity to all the parties to plead their stand in writing in the form of plaint, written statement and replication. Particularly speaking, pleadings are required for the just and proper adjudication of the case in the form of litigation before the Court.

9. Considering the circumstances in its totality, **I hereby deem it appropriate to set-aside the impugned order dated 10.05.2022 (P-3) to the extent of striking off the defense of defendant (petitioner herein), and consequently, grant one more effective opportunity to the petitioner/defendant for filing his written statement, on or before 12.09.2023, and then to re-frame the issues afresh, if so required. However, it would be subject to the payment of Rs.10,000/- as costs, which would be paid to the plaintiff (respondent herein) before the Trial Court.**

10. Petition stands **disposed of** accordingly.

(SANJAY VASHISTH)
JUDGE

August 21, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*