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

CR-2300-2023 (O&M)

Date of Decision: 19.04.2023

Satnam Singh and others

...Petitioners

Versus

Jasvir Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kulwinder Singh, Advocate
for the petitioners.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 16.02.2023(Annexure P-8) passed by Ld. Additional Civil Judge (Sr. Divn.), Dera Bassi, whereby defence of defendants No.1 to 3/petitioners was struck off.

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

2.1. Respondent No.1/plaintiff filed a suit for permanent injunction for restraining defendants No.1 to 3/petitioners, forcefully and without due course of law from raising any further construction over the *Rurri* measuring 50 square yards. Petitioners appeared through their counsel. Since petitioners are illiterate persons and doing the work of agriculture, they could not contact their counsel and therefore the case was adjourned repeatedly from time to time for filing written statement. Resultantly, vide impugned order the defence of petitioner was struck off.

3. Learned counsel for petitioners would argue that petitioners were not in knowledge of the case being taken up on 16.02.2023, when the impugned order was passed. He would further argue that petitioner/defendants would suffer irreparable loss if they are not allowed to defend their case.

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

5. I have heard learned counsel for petitioners and perused the case file.

6. Provisions contained in Order VIII Rule 1 CPC though ought to be adhered to but learned Court below could have still permitted petitioners 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 to disallow filing of written statement.

7. Trite law it is that procedure is a handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. Prejudice would indeed be caused to petitioners unless afforded an opportunity to file written statement.

8. Given the number of opportunities already taken by petitioners 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, learned counsel for petitioners submits that petitioners have tendered an unconditional apology *qua* their neglect.

9. Consequently, petitioners are granted one opportunity to file written statement subject to payment of costs of Rs.5000/-. Revision stands disposed of

and impugned order is modified accordingly.

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

(ARUN MONGA)
JUDGE

April 19, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No