

Sr. No. 120

2023:PHHC:053160

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

CR-2223-2023 (O&M)

Date of decision: 17.04.2023

Lakhwinder Kaur

...Petitioner

Vs.

M/s Banyal Cold Storage through its partner Sh. Rajeev Singh Thakur
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Rishma Verma, Advocate,
For the petitioner.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 11.01.2023 passed by learned Civil Judge (Junior Division), District Jalandhar whereby, defence of petitioner/defendant No.1 was struck off and prays that one opportunity be given to petitioner to file written statement.

2. Succinct facts first.

2.1. Respondent No.1-plaintiff filed a suit for permanent injunction restraining defendant No.1 from encroaching any part of land measuring 02 Kanals 17 Marlas and declaration to the effect that sale deed dated 27.12.2021 executed by defendant No.3 pertaining to land measuring 15.25 Marlas be declared as Null and void.

2.2. Petitioner appeared on 06.09.2022 and case was adjourned for filing written statement for 15.11.2022. On 15.11.2022, matter was adjourned for 11.01.2023. Vide impugned order dated 11.01.2023, defence of petitioner was struck off by learned Court below by observing that defendant No.1 failed to file his written statement within statutory period and several opportunities have been availed to file the same. However, on

the same date, opportunity was given to other defendants to file written statement subject to costs of Rs.1000/-.

3. Elaborating her arguments, learned counsel would submit that impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, petitioner/defendant No.1 may be permitted to file written statement in the interest of justice and equity.

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

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

6. I am of the view that provisions of Order 8 Rule 1 CPC, ordinarily ought to be adhered to, but learned Court below could have permitted the petitioner to file written statement subject to certain penalty as a deterrent. Otherwise also, provisions contained in Order 8 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 strike off defence of defendant at very early stage.

7. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases by filing written statement ought not to be taken away by the Court except in a case of their deliberate omission/failure to file written statement, particularly when the other side can be compensated by costs. Prejudice would indeed be caused to petitioner herein, unless afforded an opportunity to file written statement.

Trial in the suit may lead to unjust consequences in the absence of an opportunity to petitioner-defendant No.1 to file written statement.

8. Learned counsel for petitioner-defendant No.1 undertakes to file the written statement on the next adjourned date, subject to terms and conditions, as may be imposed.

9. For the foregoing reasons, I deem it appropriate to grant one opportunity to petitioner-defendant No.1 to file written statement, subject to costs of Rs.5,000/- to be paid to plaintiff/respondent No.1, which shall be a condition precedent. If the costs are not paid, as directed, the impugned order shall stand restored. To that extent, the impugned order is modified and the revision petition is allowed dispensing with notice to the respondents.

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

(ARUN MONGA)
JUDGE

17.04.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No