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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 24.04.2023

Shanti Devi.....*Petitioner**Versus**Kuldeep Kumar and others*.....*Respondents***Coram: Hon'ble Mr. Justice Rajbir Sehrawat****Present: Mr. Kanwar Abhay Singh, Advocate
for the petitioner**

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Rajbir Sehrawat, J. (Oral)CM 7125-CII-2023

Prayer in this application filed under Rule 3-A (1) of Chapter VI, Part B, Vol. V of the Punjab and Haryana High Court Court Rules and Orders is for grant of leave to file the petition without the Roll of Advocates.

For the reasons mentioned in the application, the same is allowed.

Main case

The present revision petition has been filed under Article 227 of the Constitution of India, praying for setting aside the order dated 19.07.2022 (Annexure P-3) passed by the learned Civil Judge (Junior Division) Ludhiana, whereby the defence of the petitioner has been struck off.

It is submitted by counsel for the petitioner that the petitioner

has duly appeared before the trial Court. The trial Court has struck off the defence of the petitioner/defendant No. 1 vide order dated 19.07.2022 (Annexure P3). However, the default in filing the written statement was not deliberate. The petitioner is facing serious medical conditions. Therefore, she could not file the written statement in all the cases; which have been thrust upon her by respondent No. 1. So far as the present suit is concerned, although the written statement was filed, however, it turned-out that the said written statement was meant for another suit. The said written statement had to be taken back; for filing the appropriate written statement in the present suit. However, on the same day when the written statement wrongly filed has been taken back, the Court has struck off the defence of the petitioner. It is further contended that the petitioner is the contesting defendant, therefore, if she is not permitted to file the written statement, then her case would be seriously prejudiced. Hence, it is prayed that the petitioner be granted an opportunity to file the written statement.

In view of the nature of the case, no notice to other parties requires to be issued, at this stage.

Having heard counsel for the petitioner and having perused the case file, this Court finds that petitioner/defendant No. 1 was granted as many as seven opportunities for filing the written statement. However, the petitioner failed to avail the said opportunities. Therefore, this Court does not find any *ex-facie* impropriety in the course of action adopted by the Court below.

However, the rules of procedure are hand-made just to advance the substantial justice and not to defeat it. The substantial justice requires

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hearing out the parties instead of excluding them from hearing. The impugned order shows that the written statement was filed; though it was detected later on that the said written statement was meant for another suit. Hence, there can be a scope for some impression, though misconceived regarding the written statement having been filed in the present case. Moreover, the petitioner is the contesting defendant in the suit and if she is not granted an opportunity to file the written statement then her case would be seriously prejudiced beyond redemption. Hence, it would not be unjustified, at this stage, if the petitioner is not granted one opportunity to file the written statement and to contest the suit accordingly.

In view of the above, the impugned order dated 19.07.2022 (Annexure P3) passed by the trial Court is set aside and the trial Court is directed to grant one effective opportunity to petitioner/defendant No. 1 to file the written statement and to contest the suit accordingly.

Disposed of in the aforesaid terms.

(Rajbir Sehrawat)
Judge

24.04.2023

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No