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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No. 2440 of 2023 (O&M)
Date of Decision:21.07.2023

Beant Kaur

... Petitioner

Versus

Angrej Kaur and Others.

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Sandeep Kumar Bansal, Advocate
for the petitioner.

.....

SANJIV BERRY, J.

CM-10166-CII-2023

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed and the documents mentioned therein are taken on record as Annexure P-3.

CM stands disposed of.

CR No. 2440 of 2023

2. Present revision petition has been preferred under Article 227 of the Constitution of India, by the petitioner (defendant No.3 i.e. Beant Kaur) against the impugned order dated 29.08.2022 (Annexure P-2), passed by Ld. Civil Judge (Jr. Div.), Talwandi Sabo, whereby, the defence of the petitioner-defendant No.3 along with defendant No.1, 2, 5 to 8, 13 and 25

has been struck off.

3. Heard.

4. After hearing the submissions advanced by the learned counsel for the petitioner and perusing the impugned order, it is observed that for the purpose of deciding the petition there is no necessity to issue notice to the respondents.

5. In nut-shell, the facts of the case are that the respondent No.1-plaintiff had filed a suit for declaration claiming the plaintiff to be owners in joint possession of the suit property besides seeking declaration to the effect that the sale deed dated 01.09.2020 already executed by defendant in favour of defendant No.13 is liable to be set aside. The plaintiff also sought for permanent injunction for restraining the defendants No. 1 to 6 and 13 from alienating the suit property in any manner.

6. Upon notice of the suit the defendants appeared through counsels, infact the present petitioner-defendant No.3 appeared through counsel on 01.12.2021 and sought time for filing the written statement. Despite taking adjournments the written statement was not filed and vide order dated 16.03.2022 the defendants were asked to file the written statement subject to payment of ₹200/- as costs and vide order dated 14.07.2022 the case was adjourned for the same purpose subject to payment of the previous costs. Due to non filing of the written statement and non payment of costs, the impugned order was passed striking of the defence of the present petitioner along with some of the defendants mentioned above.

Aggrieved by the same the present revision petition has been preferred.

7. It is submitted by learned counsel for the petitioner that the petitioner-defendant could not file the written statement within the stipulated time and on the date fixed because of the fact that the learned counsel representing the petitioner had noted wrong date in the case. He submits that the litigation is regarding the property of the petitioner and if he is debarred from pursuing her case on technicalities and not allowed to pursue it on merits, she will suffer irreparable loss and damage which can probably jeopardize her life too.

8. He submits that the petitioner-defendant undertake to file the written statement in case such permission is granted by this Court. He also submitted the provisions of Order 8 Rule 1 CPC is directory in nature and in the interest of justice one opportunity be afforded to the petitioner to file the written statements. He further submitted that no prejudice would be caused to the plaintiff-respondent No.1 by affording such opportunity because the suit is pending in the trial Court for 22.08.2023 for plaintiff evidence and in any case the plaintiff can be compensated with costs.

9. In support of his submissions, the learned counsel for the petitioner has relied 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 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.”

10. Reference in this regard be made to the judgment in the case of ***Bharat Kalra Vs. Raj Kishan Chabra, 2022 SCC, OnLine SC 613*** wherein it has been held that the provision of Order 8 Rule 1 of CPC is not mandatory relying upon the judgment of the Supreme Court in ***Kailash V. Nankhu & Ors. (2005) 4 SCC 480***.

11. Thus, keeping in view the facts and circumstances mentioned above and the fact that the case is pending before the learned trial Court for 22.08.2023 for plaintiff evidence. Thus, in case the written statement by defendant No.3- petitioner is allowed to be taken on record by the learned trial Court, no prejudice in any manner is going to be caused to any party, especially when the case is pending in the trial Court for 22.08.2023, for the purpose of plaintiff evidence. Infact filing of written statement by the petitioner-defendant No.3 will help the learned trial Court to arrive at just decision in the matter and in allowing so, the plaintiff can well be compensated by payment of costs which will be in consonance with the judgments referred (supra) and in order to impart complete justice between the parties.

12. In view of above discussions and the above facts and circumstances in its totality, this Court deem it appropriate to set-aside the impugned orders dated 29.08.2022 (Annexure P-2) to the extent of striking off the defence of the present petitioner-defendant No.3 and consequently, the petitioner-defendant No.3 is granted one more opportunity to file the written statement, on or before the next date fixed before the trial Court i.e

22.08.2023, and then the trial Court may re-frame the issues afresh, if so required. However, it would be subject to payment of ₹7,000/- as costs to the plaintiff.

13. Petition stands disposed of accordingly.

(SANJIV BERRY)
JUDGE

21.07.2023
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i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No