

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

267

CR-2853-2023

Date of Decision: 15.12.2023

Navjot Singh Kang

....Petitioner

Versus

Prabhjot Kaur and others

....Respondents

**CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Neeraj Yadav, Advocate for the petitioner.

Mr. Kulwinder Bhargav, Advocate and  
Mr. Sagar Bathla, Advocate  
for respondent No.1.

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**SANJAY VASHISTH, J.(Oral)**

1. Present revision petition has been filed by the petitioner, challenging the order dated 16.03.2023 (Annexure P-2) passed by learned Sub Divisional Judicial Magistrate, Sultanpur Lodhi, whereby defence of petitioner (respondent No.1 before learned trial Court) qua filing of written reply was struck off in the complaint filed by respondent-wife under Section 12 of the Protection of Women from Domestic Violence Act.

2. Learned counsel for the petitioner submits that on 08.09.2022, petitioner and respondents No.2 and 3 appeared and thereafter, talks for compromise were initiated, and matter was adjourned to 11.11.2022 by learned trial Court. When the matter came up for hearing on 11.11.2022, the same was adjourned for service of

respondent No.4. He also submits that service upon respondent No.4 (before learned trial Court) was incomplete till 05.01.2023 and there was delay on the part of the respondents herein and the complaint was pending on account of service of the respondents. Learned trial Court vide order dated 16.03.2023 struck off the defense of the petitioner and respondents No. 2 and 3. It is stated that the failure of the petitioner to file the written reply is not intentional. The petitioner would be seriously prejudiced if he is not permitted to file his written reply and the defence is struck off. It is prayed that the the petitioner be granted one opportunity to file the written reply.

3. 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 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.”*

4. On the other hand, learned counsel for respondent No.1 submits that the petitioner does not deserve any leniency because already ample opportunities for filing written reply have been afforded by him. He also informs the Court that in the proceedings under Section 125 Cr.P.C. arrears of maintenance @ of Rs.10,000/- per month was ordered by learned trial Court to be paid to respondent No.1-wife and till date, only an amount of Rs.35,000/- has been paid, whereas, Rs.1,85,000 are still due to be paid as arrears of maintenance by the petitioner. Thus, counsel for respondent No.1 submits that the impugned order is justified and has been perfectly passed by learned trial Court.

5. Taking note of the submissions, as per the view point of this Court, it is always convenient to the Court to find out solution by deciding the controversy after inviting response from all the concerned parties. Court cannot function on the principle of

technicalities only or in a specified mechanised 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 shape 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.

6. Considering the circumstances in its totality, I **hereby deem it appropriate to set-aside the impugned order dated 16.03.2023 (Annexure P-2) to the extent of striking off the defense of petitioner**, and consequently grant one more effective opportunity to petitioner for filing his written reply. **However, said concession has been made available to the petitioner subject to the payment of costs of Rs.10,000/- alongwith an amount of Rs.1,85,000/-, due to be paid by the petitioner to respondent No.1 as ordered in proceedings under Section 125 Cr.P.C. on or before the next date of hearing fixed before learned trial Court i.e. 23.02.2024 for conducting the proceedings under the Protection of Women from Domestic Violence Act, 2005. However, it is clarified that no further opportunity for filing the written reply shall be granted.**

7. Disposed of.

December 15, 2023  
*rashmi*

**[SANJAY VASHISTH]**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable?

yes/no  
yes/no