

Sr. No. 113

2023:PHHC:068583

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

CR-2931-2023 (O&M)

Date of decision: 11.05.2023

Harjap Singh and another

...Petitioners

Vs.

Smt. Manjit Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. V.K.Sandhir, Advocate,
For the petitioners.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 20.04.2023 passed by learned Civil Judge (Junior Division), Amritsar whereby, defence of petitioners/defendants No.1 and 4 was struck off and praying that one opportunity be given to petitioners to file written statement.

2. Succinct facts first.

2.1. Respondent No.1-plaintiff filed a suit for separate possession by way of partition and suit for permanent injunction restraining defendants especially defendants No.1 to 5 from further selling, alienating, mortgaging, leasing and /or transferring or disposing of the property/land to anybody in any manner.

2.2. Petitioners and pro forma respondents No.2 and 3 (defendants No.1 to 4) appeared through counsel. Since there were as many as 66 defendants and case was fixed for service of remaining defendants. Even as of now many of defendants are not served. Moreover, none of the served defendants had filed written statement. Every time, when the case was taken up further mode of service was being considered. Even on 20.04.2023, some

of the defendants were proceeded *ex parte* while some others were ordered to be served through substituted service. Though written statement was prepared but learned counsel, who got his presence marked in the morning, was not authorized to file the written statement. Since the case was taken up for hearing at 4.30 p.m. awaiting the appearance of served defendants, therefore, learned counsel was not present at that time.

2.3. Vide impugned order dated 20.04.2023, defence of petitioners and pro forma respondents No.2 and 3 was struck off by learned Court below by observing that defendants No.1 to 4 failed to file written statement within statutory period and several opportunities have been availed to file the same.

3. Elaborating his arguments, learned counsel for petitioners would submit that impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, petitioners 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 petitioners 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 petitioners 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 petitioners 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 with costs. Prejudice would indeed be caused to petitioners 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 petitioners/defendants No.1 and 4 to file written statement.

8. Learned counsel for petitioners 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 petitioners-defendants No.1 and 4 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 respondents.

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

(ARUN MONGA)
JUDGE

11.05.2023

vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No