

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

**CR-2313-2022 (O&M)
Date of decision: 31.05.2023**

VIJAY SINGH

...Petitioner

VS

SURINDER SINGH HANJRA

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.S.Dinarpur, Advocate,
For the petitioner.

Mr. Jaivir S. Chandail, Advocate and
Ms. Jyoti Kumari, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside the impugned order dated 20.04.2022 (Annexure P-12) passed by learned Civil Judge (Junior Division), Yamuna Nagar, to the extent petitioner/defendant No.1 has been denied to join the proceedings from the very beginning and to file the written statement and consequently for allowing the application of petitioner in toto for setting aside *ex parte* order dated 27.07.2018 passed against him.

2. Succinct facts first, as pleaded in the instant petition.

2.1 Respondent filed a suit for possession by way of specific performance of agreement to sell dated 18.08.2015 in respect of the land measuring 13-K 0-M against petitioner on 04.05.2018 against the petitioner before learned Civil Judge (Senior Division), Jagadhri.

2.2. On the intervening night of 19/20.02.2018, defendant No.1 left his house without informing his family members or relatives as he had apprehension of his life from Surinder Singh and Saurav Singla. On 29.08.2021 defendant No.1 returned to his house and he got to know that plaintiff has filed

suit for separate possession by way of specific performance of agreement to sell. He also got to know that his wife has already been impleaded as party in the suit as he was not traceable and he was proceeded against *ex parte* in the suit. He engaged his counsel on 31.08.2021 and got to know about *munadi* report. He wanted to join proceedings and requested to set aside the *ex parte* order dated 27.07.2018 and in alternative he also sought permission to join defendant No.1 in further proceedings.

2.3. Vide impugned order dated 20.04.2022 (Annexure P-12), he was allowed to join proceedings from that date onwards but he was denied to file written statement.

3. Learned counsel for petitioner would canvass that the impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, petitioner may be permitted to file written statement in the interest of justice and equity.

4. Per contra, learned counsel for respondent strenuously opposes the civil revision and supports the impugned order being based on correct findings.

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

6. It is a conceded case of respondent/plaintiff that agreement to sell was executed between petitioner (defendant No.1) and plaintiff *qua* which the suit has been instituted seeking performance thereof on his part. Therefore, it is in the interest of justice that petitioner is allowed to file written statement as he is the only contesting defendant and his wife cannot possibly be allowed to defend him merely because at one stage he went missing in life which resulted in proceedings under Order 5 Rule 15 of CPC.

7. I am of the view that if petitioner is not allowed to file his defence/written statement his mere participation in the further proceedings would be denial of effective opportunity to defend the suit.

8. That apart, trite law it is that procedure is a handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. They cannot be allowed to thwart real and substantial justice between the parties. 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. 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 the petitioner-defendant No.1 to file written statement.

9. In the overall premise, I deem it appropriate to grant one opportunity to petitioner-defendant to file written statement. To that extent, the impugned order is modified and the revision petition is allowed.

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

(ARUN MONGA)
JUDGE

31.05.2023
vandana

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