

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

295

CR-3116-2023(O&M)

Decided on : 12.07.2023

GIGRAJ @ GIGA RAM JAIN

. . .Appellant

Versus

RAM KUMAR AND OTHERS

. . . Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ajay Jain, Advocate,
for the petitioner.

Mr. Alok Mittal, Advocate,
for the respondents,
(appearing on advance notice).

SANJAY VASHISTH, J. (Oral)

1. Present revision petition has been preferred by the petitioner against the impugned order dated 15.04.2023 passed by Ld. Civil Judge (Jr. Div.), Bhiwani, whereby, defence of defendant No. 3A/petitioner has been ordered to be struck off.

Learned counsel for the petitioner submits that suit for possession by way of partition in respect of two storied shop bearing M. C. unit No No-545, 19 X 52.5 feet, shown in red colour in the site plan attached, situated at Bichla Bazar, Pan Manan, Bhiwani Jonepal, Bhiwani, Tehsil and District Bhiwani has been filed by the respondent No. 1-Ram Kumar (plaintiff) alongwith a consequential relief of permanent injunction restraining defendants No. 1 to 16 and their associates from the changing the nature of the property.

2. Learned counsel for the petitioner further points out that in fact,

due to the non-availability of the complete record, written statement could not be prepared and instituted within the time prescribed, which resulted in the striking off the defense of the defendant No.3-A before the trial Court. Therefore, he requests that if one more opportunity is granted to petitioner, subject to the payment of some cost also, requisite written statement can be filed by the petitioner.

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. Notice of motion.

5. At this stage, already possessed with copy of the petition, Mr. Alok Mittal, Advocate, while appearing on behalf of the respondents, objects for granting any further opportunity to the petitioner for filing written statement. He submits that it will be sheer wastage of time, as the petitioner has adopted casual approach, despite of giving several opportunities.

6. For deciding the small issue raised in the present petition, to the mind of this Court, all the details are not required to be examined minutely. As per the view point of this Court, it is always good for 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 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.

7. Considering the circumstances in its totality, **I hereby deem it appropriate to set-aside the impugned order dated 15.04.2023 to the extent of striking off the defense of defendant No. 3-A (petitioner herein), and consequently, grants one more effective opportunity to defendant No. 3-A (petitioner herein) for filing his written statement, on or before 26.07.2023, and then to re-frame the issues afresh, if so required. However, it would be subject to payment of Rs.10,000/- as costs, to be deposited in “District Bar Association Bhiwani A/c Welfare Fund”, Axis Bank A/c No. 919020014435688, IFS Code: UTIB0000402.**

8. Petition stands **disposed of** accordingly.

(SANJAY VASHISTH)
JUDGE

July 12, 2023

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Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*