

Sr. No. 114

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3222-2023 (O&M)

Date of decision: 24.05.2023

Yudhvir Sethi

...Revisionist

Vs.

Neeraj Kumar Mittal

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Bhag Singh, Advocate,
For the revisionist.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 09.03.2023 (Annexure P-1) passed by learned Rent Controller, Ambala whereby, defence of revisionist/tenant was struck off and further praying that one opportunity be given to revisionist to file written statement.

2 Learned counsel for revisionist submits that respondent-landlord filed an application under Section 13 of the Haryana Act No.11 of 1973 for ejectment of revisionist on the ground of non-payment of rent and for personal necessity. On 29.04.2022, the revisionist was proceeded against *ex parte* and thereafter case was adjourned to 09.09.2022 for *ex parte* evidence of landlord and on 09.09.2022 the landlord examined himself as PW1 and closed his *ex parte* evidence. Case was then adjourned for *ex parte* arguments for 24.11.2022. Thereafter, revisionist filed an application for setting aside the *ex parte* order and learned Rent Controller allowed the application subject to costs of Rs.1000/- to be paid in District Legal Services Authority, Ambala.

2.1 Learned counsel for revisionist further submits that costs of Rs.1000/- had already been deposited by revisionist on 24.01.2023 and on 30.01.2023 the counsel could not file written statement and sought time for filing the written statement. Case was adjourned to 09.03.2023 and on 09.03.2023, counsel was away to Delhi due to demise of his brother-in-law and revisionist being an old man of 88 years could not attend the court in time. Revisionist reached after lunch on 09.03.2023 only to learn that the impugned order had already been passed. He submits that non-appearance of revisionist and his counsel was neither intentional nor deliberate.

2.2. Elaborating his arguments, learned counsel for revisionist would canvass that impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, revisionist may be permitted to file written statement in the interest of justice and equity.

3. Given the nature of order being passed, there is no necessity to issue notice to respondent herein, as no serious prejudice would be caused to him.

4. I have heard learned counsel for revisionist and perused the case file.

5. 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 revisionist 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**¹. The Courts should not, therefore, be too harsh to strike off defence of revisionist at very early stage.

6. 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 revisionist 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 revisionist to file written statement.

7. Learned counsel for revisionist undertakes to file written statement on the next adjourned date, subject to terms and conditions, as may be imposed.

8. For the foregoing reasons, I deem it appropriate to grant one opportunity to revisionist to file written statement, subject to costs of Rs.5,000/- to be paid to respondent, 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 respondent.

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

(ARUN MONGA)
JUDGE

24.05.2023

Vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No