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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: May 25, 2023

Narinder Kaur

....Petitioner

versus

Harvinder Kaur @ Harbinder Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Satbir Rathore, Advocate,
Mr. Vinod Pundir, Advocate for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for quashing impugned order dated 01.03.2023 (Annexure P-4) passed by learned Civil Judge (Junior Division), Jalandhar, whereby defence of the petitioner/defendant No.21 was struck off.

2. Averments are that plaintiff-respondent No.1 filed suit *inter alia* for a decree of declaration to the effect that he is entitled to have 1/7th share in the suit property along with a decree of permanent injunction. On 17.01.2023, written statement could not be filed by petitioner/ defendant No.21 as she was collecting some relevant documents for preparing written statement and case was adjourned to 01.03.2023. The petitioner handed over all the relevant documents to her counsel for preparing written statement, but he could not prepare the same and file written statement. If there is any fault, the same is of her counsel and she should not be made to suffer for the fault of her counsel. Vide impugned order dated 01.03.2023 (Annexure P-4), defence of petitioner/ defendant No.21 was struck off.

3. Learned counsel for petitioner/defendant No.21 submits that written statement is very necessary for just and proper decision of the suit and in case of non-filing of the same, petitioner will suffer irreparable loss as she is *bona fide*

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purchaser of the house in dispute. He contends that counsel for defendant No.21 before the learned trial Court could not prepare the written statement and file on 01.03.2023. Non-filing of written statement within the stipulated period is neither intentional nor deliberate, is the contention.

4. Considering the nature of order being passed, facts and circumstances of the case, issuance of notice to respondent No.1/plaintiff seems unnecessary and is, therefore, dispensed with.

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

6. Impugned order is premised on the following reasons:-

“Report of Ahlmad perused. Publication issued for the service of defendant No. 3 to 5, 6, 7, 8, 18 to 20 and 22 received back duly effected but the defendant No. 3 to 5, 6, 7, 8, 18 to 20 and 22 have not come present. Case called several times since morning but none has appeared on behalf of defendant No. 3 to 5, 6, 7, 8, 18 to 20 and 22. It is 04:30PM. No further wait is justified. Therefore, defendant No. 3 to 5, 6, 7, 8, 18 to 20 and 22 are proceeded against ex parte.

Written statement and reply to the stay application not filed by defendant No. 21. Perusal of the file reveals that the defendant no. 21 has already availed many effective opportunities to file written statement and reply to the stay application but failed to file the same. This court do not deem it proper to grant another adjournment to the defendant no. 21. As such, the defence of defendant No. 21 is hereby struck off. Now the case stands adjourned to 17.05.2023 for ex parte consideration on stay application and plaintiff evidence.”

7. Provisions contained in Order VIII Rule 1 CPC though ought to be adhered to but learned Court below could have still permitted petitioner to file written statement, subject to certain penalty as a deterrent. Otherwise also, provisions contained in Order VIII 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 Court should not, therefore, be too harsh to disallow filing of written statement.

8. 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. Prejudice would

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indeed be caused to revisionist/defendant No.21 unless afforded an opportunity to file written statement.

9. Consequently, petitioner/defendant No.21 is granted one opportunity to file written statement. Revision stands disposed of and impugned order is modified accordingly. Ordinarily, this Court would have imposed some costs. However, looking at the stage of the trial and given the fact that petitioner has to bear with extra burden of litigation before this Court for the fault of her counsel, the same is not warranted in this case.

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

(ARUN MONGA)
JUDGE

May 25, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No