

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.329

Case No. : C. R. No. 3443 of 2023

Date of Decision : August 22, 2023

Mrs. Ashu Sharma Petitioner
vs.
Sandeep Sharma and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. S. K. Sandhir, Advocate
for the petitioner.

Mr. Gurcharan Dass, Advocate
for respondent no.1.

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GURBIR SINGH, J. :

1. Challenge in this revision petition is to the two orders, both dated 04.05.2023 (Annexures P-5 and P-6), passed by learned Civil Judge (Junior Division), Ludhiana (for brevity - the Trial Court), whereby defence of the petitioner has been struck off with a further prayer that application dated 03.05.2023 (Annexure P-4), filed by the petitioner for production of original documents relied upon by the opposite party and for supplying the copies thereof to her be allowed and she may also be allowed to file the written statement in the suit filed by respondent no.1-plaintiff.

2. Petitioner is defendant no.1 before the learned Trial Court. Respondent no.1-plaintiff filed a suit (Annexure P-3) for possession of room and toilet, as mentioned in the heading of the plaint and for recovery of the

amount for use and occupation thereof from the petitioner.

3. The petitioner appeared before the learned Trial Court but failed to file the written statement. So, defence of the petitioner was struck off.

4. Learned counsel for the petitioner has argued that the petitioner did not receive copy of the plaint along with summons. She appeared in the Court through counsel but copy of the plaint was not supplied. Although said request of the petitioner was not mentioned in the interim order, the petitioner moved an application dated 10.04.2023 (Annexure P-1) with a prayer to dismiss the suit as copy of the plaint was not supplied to the petitioner. On that day, copy of the plaint was supplied to the petitioner and the aforesaid application was disposed of. Many documents were also mentioned in the plaint but copies of those documents were not supplied. The petitioner moved application dated 03.05.2023 (Annexure P-4) for supplying her copies of documents but without directing respondent no.1-plaintiff to supply the documents, the said application was dismissed on 04.05.2023 (Annexure P-5). However, on that day i.e. 04.05.2023, case was adjourned for the post-lunch session for filing written statement and in the post-lunch session, the defence of the petitioner was struck off.

5. Learned counsel appearing for respondent no.1 has argued that on the very first date, the petitioner appeared but did not ask for any copy. On the next date, she appeared through counsel but did not ask for any copy of the plaint. When application was moved for supplying copy of the plaint, the same was immediately supplied. Instead of filing written statement, the petitioner moved another application for supplying her documents including notice dated 10.11.2022, sent to the petitioner for revocation. Since the

petitioner failed to file written statement despite many opportunities and last opportunity, so the defence of the petitioner has been rightly struck off.

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

7. No doubt, a party is supposed to file written statement within 90 days of receipt of summons but in the case in hand, on 10.04.2023, the petitioner moved an application (Annexure P-1) that a copy of the plaint be supplied and the same was immediately supplied but the order is silent that copy of plaint was supplied under protest or a copy was also sent with the summons. Under such circumstances, it cannot be said that the petitioner got copy of plaint along with summons. Moreover, procedure is hand-maid to the administration of justice and is meant for advancement of justice.

8. Keeping in view all the facts and circumstances of the case, the petitioner must be given one opportunity to file written statement and to defend the case.

9. So, without discussing the merits of the case, the impugned order dated 04.05.2023, passed by learned Trial Court, whereby defence of the petitioner has been struck off, is set aside. The learned Trial Court is directed to give one opportunity to the petitioner to file written statement and the same shall be positively filed on 25.08.2023 i.e. the date fixed before the learned Trial Court, subject to payment of Rs.7500/- as costs to be paid to respondent no.1-plaintiff by the petitioner. It is further clarified that in case of any default, this order shall automatically stand vacated. After filing of written statement, the learned Court would decide afresh the application

(Annexure P-4) for production of documents, in accordance with law.

10. The present revision petition stands disposed of in the aforesaid terms.

11. Pending applications, if any, shall stand disposed of along with this judgment.

August 22, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.