

CR-3778-2023

- 1 -

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

114

CR-3778-2023

Decided on : 07.07.2023

Mehtab Singh and another

... Petitioner(s)

Versus

Chinder Kaur and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Lakhwinder Singh Mann, Advocate
for the petitioner(s).

SANJAY VASHISTH, J. (Oral)

1. Present revision petition has been preferred by the petitioners against the impugned order dated 10.02.2023 (P-7), passed by Ld. Civil Judge (Jr. Div.), Amritsar, whereby, defense of the petitioners has been struck off on account of non-filing of of their respective written statements despite passing of 09 months. Accordingly, Court proceeded with the next stage i.e. framing of the issues, on the basis of evidence available before it. .

2. Learned counsel for the petitioners submits that the suit for declaration has been filed for seeking a decree against the defendants and in fact after collecting the relevant documents and the facts, written statements had been prepared, but same could not be delivered to the Counsel after its finalization. Counsel further submits that petitioners (defendant No. 1 and 2) are illiterate and rustic villagers and are residing at border area of District Amritsar. Thus, he submits that if one opportunity is granted, subject to the payment of some cost also, requisite written statement can be filed by the petitioners.

CR-3778-2023

- 2 -

5. Learned counsel for the petitioners 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.*

CR-3778-2023

- 3 -

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.”*

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

7. This Court does realize that for deciding the petition, there is no need to call for the respondent(s) for the issue involved herein. Rather, same would be sheer waste of time for no gain to any of the party to the *lis*. Moreover, proceedings for recording of the evidence is yet to start and basic relief has been claimed against defendant No.1. If written statement of petitioners (defendants No. 1 & 2) are available before the Court, it would be convenient for the Court also to decide the controversy involved.

8. Considering the circumstances in its totality, I hereby deem it appropriate to set-aside the impugned order dated 10.02.2023 (P-7) to the extent of striking off the defense of defendants No. 1 & 2 (petitioners herein), and consequently, grants one more opportunity to the defendants No. 1 & 2 (petitioners herein) for filing its written statement, on or before the next date fixed before the Trial Courts, and then to re-frame the issues afresh, if so required. However, it would be subject to the deposit of Rs.5,000/- as costs, which would be payable to the plaintiff(s).

Petition stands **disposed of** accordingly.

(SANJAY VASHISTH)
JUDGE

July 07, 2023

Riya

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