

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

332

**CR-3684-2023
Decided on : 09.08.2023**

Raj Kumar And Another

... Petitioner(s)

Versus

Kapil Dev And Others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Subhash Kumar, Advocate
for the petitioners.

Mr. Varun Goyal, Advocate
for respondent No.1.

SANJAY VASHISTH, J. (Oral)

1. Present revision petition has been preferred by the petitioners (defendant Nos.3 and 4) – Raj Kumar son of Jang Bahadur and Saneha wife of Raj Kumar, challenging the impugned order dated 19.12.2022, passed by learned Civil Judge (Jr. Divn.), Jalandhar, whereby, rights of the petitioners/defendant Nos.3 and 4 has been ordered to be struck off, on account of non-filing of the written statement within the prescribed time.

2. Mr. Varun Goyal Advocate, puts in appearance on behalf of respondent No.1, and files his power of attorney in Court today, which is taken on record, subject to all just exceptions. Office to tag the same at appropriate place in case file.

3. After hearing the petitioners (defendant Nos.3 and 4), at the time of preliminary hearing on 03.07.2023, following order was passed:-

“1. Present revision petition has been preferred by the petitioners under Article 227 of the Constitution of India,

for setting aside the impugned zimni order dated 19.12.2022 (P-6), passed in Civil Suit No. 1953 of 2022, titled as, 'Kapil Dev Vs. Jang Bahadur etc.', pending in the Court of Ld. Civil Judge (Jr. Divn.), Jalandhar, whereby, the Ld. Trial Court has struck off the right of the petitioners (i.e. defendants No.3 & 4 in the suit) of filing written statement in the suit.

2. Counsel for the petitioners submits that suit was filed on 05 July, 2022, and the parties to the lis are closely related to each other. For the reason of not filing the written statement, defense of the petitioners (defendants No.3 & 4 in the suit) has been struck-off vide impugned order dated 19.12.2022 (P-6).

Further submits that if one opportunity is granted to the petitioners, subject to the payment of some costs, as directed by the Court, the required written statement would be filed, so that suit can be decided on its merits.

3. Notice of motion for 09.08.2023.”

4. It is also informed to the Court that the proceedings in the suit are at initial stage as the issues are yet to be framed.

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.

6. It is always the endeavour of the Court to have complete set of pleadings of all the respective parties so that rights of no one as party to the suit, gets prejudiced.

7. Even in the present case, plaintiff and the defendants are related to each other and therefore, counsel for the respondents herein (defendant Nos.1 and 2) also submits that subject to the payment of cost, petitioners (defendants No.3 and 4) can be granted one last opportunity for the purpose of filing of the written statement, if this Court considers it appropriate.

8. I have heard learned counsel for the parties and perused the relevant material on record.

9. Be that as it may, this Court has already taken note of the necessity of the filing of written statement and completion of the pleadings before the Court, more in the interest of imparting justice to the concerned parties.

10. Besides above, for deciding the small issue raised in the present petition, all the details are not required to be examined minutely. As per the view point of this Court, it is always desirable 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 mechanized 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. In fact, pleadings are required for the just and proper adjudication of the case in the form of litigation before the Court.

11. From the referred judgment of **Paro and others'** (*supra*), this Court has noticed the observation made therein, relevant part of which 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.”*

12. Considering the circumstances in its totality and the compassion shown by the respondents (plaintiff and defendant Nos.1 and 2), **I hereby deem it appropriate to set-aside the impugned order dated 19.12.2022 to the extent of striking off the defense of defendants No.3 and 4 (petitioners herein).** Accordingly, defendants No.3 and 4 (petitioners herein) is granted one more effective opportunity for filing their written statements, within three weeks from today, and then to re-frame the issues afresh, if so required. **However, it would be subject to the payment of Rs.10,000/- as costs, which would be paid to the plaintiff (respondent herein) before the Trial Court.**

13. It is, however, made clear that if petitioners/defendant Nos.3

and 4 fails to file their written statement on or before the next date of hearing, fixed before the Trial Court, no further opportunity would be granted to her for the said purpose.

Petition stands **disposed of** accordingly.

(SANJAY VASHISTH)
JUDGE

August 09, 2023
Lavisha

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