

CR-3716-2023

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

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CR-3716-2023

Decided on : 06.07.2023

Municipal Corporation, Faridabad

... Petitioner(s)

Versus

Rajni and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Pritam Singh Saini, Advocate and
Mr. Abhishek Goel, Advocate
for the petitioner(s).

SANJAY VASHISTH, J. (Oral)

1. Present revision petition has been preferred by the petitioner (defendant No.2 i.e. Commissioner, Municipal Corporation, Faridabad) against the impugned order dated 21.09.2022 (P-4), passed by Ld. Civil Judge (Jr. Div.), Faridabad, whereby, defense of defendant No.2 has been struck off.

2. Learned counsel for the petitioner points out that although, the dispute is in between two individuals i.e. between plaintiff- Smt. Rajni and defendant No.1 – Devender Verma, still, said suit has been instituted against respondent No.2 (defendant No.1) for seeking a decree of permanent injunction restraining him from doing encroachment over the plot belonging to the plaintiff (22.80 x 12.00 sq. meters) and also to restrain from causing interference in the peaceful possession of the suit property. However, a decree of mandatory injunction was also sought to direct defendant No.2 (petitioner herein) for taking necessary action against defendant No.1 forthwith.

3. Learned counsel for the petitioner further points out that in fact, due to the non-availability of the complete record, written statement could not be prepared and instituted within the time prescribed, which resulted in to the striking off the defense of the defendant No.2 before the trial Court.

4. Learned counsel further submits that although, there is no direct relief claimed against defendant No.2, still for proper adjudication of the suit, it would be convenient for the Court itself, if the pleadings of all the parties are addressed in advance to lead the evidence by the respective parties.

However, he further informs the Court that after passing of the impugned order dated 16.07.2023, only the issues have been framed, and neither any material witnesses proceedings has taken place nor the evidence of the plaintiff has started. Next date fixed in the suit before the trial Court is 25.07.2023.

5. Learned counsel for the petitioner 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.*
- 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 defendant No.2 – Municipal Corporation, Faridabad is 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

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appropriate to set-aside the impugned order dated 21.09.2022 (P-4) to the extent of striking off the defense of defendant No.2 (petitioner herein), and consequently, grants one more opportunity to the defendant No.2 (petitioner 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 deposited before the Trial Court.

Petition stands **disposed of** accordingly.

(SANJAY VASHISTH)
JUDGE

July 06, 2023

J.Ram

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