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

CR No. 3730 of 2023

Date of Decision:17.07.2023

Municipal Corporation, Faridabad

... Petitioner

Versus

Seema Girotti and Others.

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Ms. Vibha Nagar, Advocate with
Mr. Pritam Singh Saini Advocate
for the petitioner

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SANJIV BERRY, J.

Present revision petition has been preferred by the petitioner (defendant No.3 i.e. Joint Commissioner, NIT Zone, Municipal Corporation, Faridabad) against the impugned order dated 22.08.2022 (Annexure P-2), passed by Ld. Civil Judge (Jr. Div.), Faridabad, whereby, defence of defendant No.3 had been struck off by learned Civil Judge, (Jr. Division) dealing with the case.

2. It is contended by the learned counsel for the petitioner that in the present case there is basically the dispute between plaintiff and defendant No.1 and 2 i.e respondent No.2 and 3 respectively. The plaintiff have sought relief of partition of the suit property along with relief of permanent injunction restraining defendants No.1 and 2 from raising any illegal construction in the area of common passage and also sought relief of

mandatory injunction to direct defendants No.1 and 2 to demolish/remove any type of illegal construction over the common passage of the suit property and in case defendants No.1 and 2 failed to remove the illegal construction, then defendant No.3 (petitioner herein) to demolish/remove any illegal construction over the common passage of the property.

3. He submits that the plaintiff in the suit has not sought any direct relief against the petitioner-defendant No.3 (Municipal Corporation), but the only relief sought against defendant No.3 is to remove illegal construction in case the defendants No.1 and 2 failed to do so.

4. Learned counsel for the petitioner further submits that the official defendant No.3 could not file the written statement despite taking some opportunities, as the staff of the petitioner-defendant No.3 was busy in demolishing the unauthorized construction on the forest land owned by the Government of Haryana in Village Khori, District Faridabad and hence could not file written statement within the stipulated period of 90 days, and the learned trial Court without issuing any caution, proceeded to strike off the defence of defendant No.3 vide order dated 22.08.2022. An application was filed for recalling of order dated 22.08.2022 and for permission to file written statement, but vide order dated 12.04.2023 (Annexure P-4) the same was dismissed by the learned trial Court.

5. Learned counsel further submits that although, there is no direct relief claimed against defendant No.3, still for proper adjudication of the suit, it would be appropriate for the just decision of the case that the petitioner be afforded opportunity to file the written statement, in the case which is still pending for consideration of stay application for 23.08.2023

and the evidence has not yet been adduced.

6. In support of his submissions, the learned counsel for the petitioner has relied 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.”*

7. He has also referred to the order dated 06.07.2023 passed by the Co-ordinate Bench in ***CR No. 3716 of 2023 Municipal Corporation, Faridabad Vs. Rajni and others***, in similar circumstances.

8. After hearing the arguments advanced by the learned counsel for the petitioner-defendant No.3 and perusing the impugned orders, it is observed that for the purpose of deciding the petition there is no necessity to issue notice to the respondents. As mentioned supra the evidence is yet to start and the plaintiff has primarily claimed relief qua defendant No.1 and 2 and it is averred in the plaint that a decree of mandatory injunction may be passed in favour of the plaintiff and against the defendants directing the defendant No.1 and 2 to demolish/remove any type of illegal construction over common passage of the suit property and if the defendant No.1 and 2 failed to do so, then the defendant No.3 may kindly be directed to

demolish/remove the illegal construction over the common passage. Further from the perusal of the impugned order, it transpires that the case was fixed for filing of the written statement by defendant No.3 for 22.08.2022 when on the failure of defendant No.3 to file the written statement, its defence was struck off without giving any caution in the form of last opportunity or imposition of cost. It is specifically pleaded by the petitioner in the application before the learned trial Court in the application moved by it for recalling of the order dated 22.08.2022 and for permission to file the written statement that the staff of the petitioner-defendant No.3 Corporation was busy in demolishing the unauthorized construction on the forest land owned by the Government of Haryana in Village Khor, District Faridabad and hence could not file written statement within the stipulated period of 90 days, but this aspect has not been judiciously considered by the learned trial Court.

9. Considering the facts mentioned above and the fact that the evidence is yet to commence in the case, in case the written statement by defendant No.3 petitioner is allowed to be taken on record by the learned trial Court, no prejudice in any manner is going to be caused to any party, especially when the case is pending in the trial Court for 23.08.2023, only for the purpose of consideration on the stay application and the evidence not having yet started. Infact filing of written statement by the petitioner/defendant No.3 will help the learned trial Court to arrive at just decision in the matter and in allowing so, the plaintiff can well be compensated by payment of costs.

10. Thus, considering the above facts and circumstances in its

totality, this Court deem it appropriate to set-aside the impugned orders dated 22.08.2022 (Annexure P-2) and 12.04.2023 (Annexure P-4) to the extent of striking off the defence of defendant No.3 (petitioner herein), and consequently, the petitioner/defendant No.3 is granted one more opportunity to file its written statement, on or before the next date fixed before the trial Court i.e 23.08.2023, and then to re-frame the issues afresh, if so required. However, it would be subject to payment of ₹5,000/- as costs to the plaintiff.

11. Petition stands disposed of accordingly.

(SANJIV BERRY)
JUDGE

17.07.2023

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i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No