

CR-3857-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-3857-2023 (O&M)
Decided on : 07.08.2023

Palwinder Singh and others

. . . Petitioner(s)

Versus

Sukhwant Kaur and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Gobind Singh Randhawa, Advocate
for the petitioner(s).

SANJAY VASHISTH, J. (Oral)

CM-13431-CII-2023

i. Present application has been filed under Section 151 CPC for seeking pre-ponement of the date of hearing in the main case i.e. CR-3857-2023, which is fixed for its hearing for 17.11.2023 to an early date.

ii. For the reasons stated in the application, which is duly supported by an affidavit of the applicant-petitioner No.1, prayer made in the application is allowed, and consequently, the date of hearing in the main case i.e. CR-3857-2023 is advanced from 17.11.2023 to today itself for hearing.

CM stands disposed of.

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1. Present revision petition has been preferred by the petitioners (defendants No.1 to 3) against the impugned order dated 28.03.2023 (P-2), passed by Ld. Civil Judge (Jr. Div.), Batala, whereby, defence of the petitioners/defendants No.1 to 3 has been ordered to be struck off.

2. Learned counsel for the petitioners submits that suit for permanent injunction filed by one Sukhwant Kaur (respondent No.1-plaintiff), is pending before the Court of Civil Judge (Sr. Divn.), Batala. In

the said suit, defendants No.1 to 3 (petitioners herein) had appeared before the trial Court after coming to know of the proceedings before it. Yet, on account of some unavoidable circumstances, necessary instructions could not be passed on to the representing counsel before the trial Court for preparation of the written statement on their behalf. Accordingly, vide order dated 28.03.2023 (P-2), defense of petitioners/defendants No.1 to 3, was struck off.

3. Learned counsel for the petitioners further submits that in fact wife of petitioner/defendant No.1, and mother of petitioners/defendants No.2 & 3, had met with an accident, and as a result of which, she expired on 13.05.2023. Thus, inside atmosphere of the house was completely disturbed and under such compelling circumstances, petitioners could not pursue the proceedings of the civil suit pending before the Court below.

Therefore, he requests that if one more opportunity is granted to petitioners, subject to the payment of some cost also, requisite written statement can be filed by the petitioners.

4. 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.*
- 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.”*

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

6. 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*. If written statement of defendants No.1 to 3, is available before the Court, it would be convenient for the Court also to decide the controversy involved.

7. For deciding the small issue raised in the present petition, to the mind of this Court, all the details are not required to be examined minutely.

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As per the view point of this Court, it is always good 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. Particularly speaking, pleadings are required for the just and proper adjudication of the case in the form of litigation before the Court.

8. Considering the circumstances in its totality, **I hereby deem it appropriate to set-aside the impugned order dated 28.03.2023 (P-2) to the extent of striking off the defense of defendants No. 1 to 3 (petitioners herein), and consequently, grant one more effective opportunity to defendants No.1 to 3 (petitioners herein) for filing their written statement, on or before 04.09.2023, and then to re-frame the issues afresh, if so required. However, it would be subject to payment of Rs.5,000/- as costs, which would be paid to the plaintiff (respondent No.1 herein) before the Trial Court.**

9. Petition stands **disposed of** accordingly.

(SANJAY VASHISTH)
JUDGE

August 07, 2023

J.Ram

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