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

CR-4091 of 2023

Date of decision: 29.09.2023

Hero Fincorp Limited and another

.....Petitioners

vs.

Gurinder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Hitender Kansal, Advocate,
for the petitioner.

Mr. Vipin Mahajan, Advocate,
for the respondent.

NAMIT KUMAR, J. (ORAL)

1. Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 05.05.2023 (Annexure P-1) passed by the Court of learned Civil Judge (Junior Division), Batala, in Civil Suit No.CSCJ/04/2021 titled 'Gurinder Singh v. Hero Fincorp', whereby defence of the petitioner-defendants has been struck off.

2. Brief facts for disposal of the present revision petition are that respondent filed a civil suit against petitioners seeking declaration to the effect that the agreement No. BTLRUC00100004988871 and its terms and conditions for the product used car refinance are null and void, *void ab initio*, illegal, unlawful, ineffective, inoperative, constitutes malice in law, malicious, capricious and is not sustainable in any circumstances what so ever and are not binding and applicable upon the plaintiff and the statement of account showing the amount of Rs.11,23,683/- as principal

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amount and the demand of instalments by the petitioner/defendants from the respondent/plaintiff till the disbursement of the whole amount instead of disbursement of Rs.7,46,660/- only is/are also null and void, *void ab initio*, illegal, unlawful, ineffective, inoperative, constitutes malice in law, malicious, capricious and is not sustainable in any circumstances what so ever as the petitioner/defendants have released the amount of Rs.7,46,660/- only in the account of the respondent/plaintiff i.e. account No.32420070 with HDFC Bank instead of amount of Rs.11,23,683/- agreed to be paid by the petitioner/defendants to the respondent/plaintiff with consequential relief of mandatory injunction ordering and directing the petitioner/defendants to issue/release the statement of account by mentioning the amount of Rs.7,46,660/- as principal amount therein or to release the remaining amount of Rs.3,77,023/- and thereafter to issue the details of account statement belonging respondent/plaintiff mentioning therein the details of instalments paid by the respondent/plaintiff to petitioner/defendants and the remaining actual amount to be paid by the respondent/plaintiff to the petitioner/defendants towards the principal amount with the prayer of suit for permanent injunction restraining the petitioner/defendants from injuring the credit score of the respondent/plaintiff, to misuse the blank signed cheques of the respondent/plaintiff and to recover the exorbitant amount (without releasing the remaining amount of the agreed loan amount and without providing the details of the amounts paid by the respondent/plaintiff to the petitioners/defendants) by coercive machinery illegally, unlawfully and in any manner what so ever. Despite availing numerous opportunities,

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petitioner-defendants failed to file their written statement, therefore, their defence was struck off vide impugned order dated 05.05.2023.

3. Learned counsel for the petitioners contended that non-filing of the written statement by the petitioners is neither intentional nor deliberate. He further submitted that one opportunity may be granted to the petitioners to file their written statement before the trial Court. He further submitted that if petitioners are not allowed to file their written statement they will suffer irreparable loss, which may not be compensated in any manner.

4. Mr. Vipin Mahajan, Advocate, has appeared and filed his power of attorney on behalf of the respondent-plaintiff, which is taken on record. He submits that he has no objection if the petitioners are granted one more opportunity to file their written statement subject to payment of costs to the respondent.

5. I have heard learned counsel for the parties and perused the record.

6. The question is as to whether under the facts and circumstances of the case, the petitioner deserves to be granted any further opportunity for filing of written statement while setting aside the order passed by the Court below whereby defence of the petitioner was struck-off on account of non-filing of written statement.

7. Comprehensive amendments were made in CPC in the year 2002 in Order 8, Rule 1 CPC. The relevant provision is reproduced below:-

"Written Statement:- The defendant shall, within thirty days from the date of service of summons on him, present a written

statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

8. Aforesaid provision provides that the defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence, provided that where the defendant fails to file written statement within the said period of thirty days, he shall be allowed to file the same within such further time, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

9. The issue as to whether the period so provided under Order 8, Rule 1 CPC for filing the written statement is mandatory or directory, came up for consideration before Hon'ble the Supreme Court in ***Kailash v. Nanhku and others 2005 (2) RCR (Civil) 379***, wherein it was opined that the purpose of amendment is to expedite and not to scuttle the hearing. This does not impose an embargo on the power of the court to extend the time further, as no penal consequences as such have been provided, the provisions being in the domain of the procedural law are not mandatory. However, it was further opined that keeping in view the need for expeditious trial of the civil cases, ordinarily the time schedule should be followed as a rule and departure therefrom would be by way of exception. The extension of time should not be granted as a matter of routine and merely for asking especially when the time is beyond the period of 90

days. In case any extension is to be granted, the same could be for good reasons to be recorded in writing may be in brief. Relevant paras from the aforesaid judgment are extracted below:-

"45(i) to (iii) x x x x

(iv) The purpose of providing the time schedule for filing the written statement under Order 8, Rule 1 of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 Order 8 of the CPC is couched in negative form, it does not specify any penal consequences flowing from the noncompliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order 8, Rule 1 of the CPC is not completely taken away.

(v) Though Order 8, Rule 1 of the CPC is a part of procedural Law and hence directory, keeping in view the need for expeditious trial of civil cases which persuaded the Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."

10. The issue regarding filing of belated written statement came up

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for consideration before Hon'ble the Supreme Court in view of objection raised by the plaintiff therein, in ***M. Srinivasa Prasad and others v. The Comptroller & Auditor General of India and others 2007 (4) SCT 380***, wherein Hon'ble the Supreme Court while setting aside the order passed by the trial court as well as the High Court, remitted the matter back for consideration afresh, as there were no reasons forthcoming for allowing the written statement to be filed after expiry of period of 90 days.

Relevant para thereof is extracted below:-

"7. Since neither the trial Court nor the High Court have indicated any reason to justify the acceptance of the written statement after the expiry of time fixed, we set aside the orders of the trial Court and that of the High Court. The matter is remitted to the trial Court to consider the matter afresh in the light of what has been stated in Kailash's case(supra). The appeal is allowed to the aforesaid extent with no order as to costs."

11. Subsequently the same issue again came up for consideration before Hon'ble the Supreme Court in ***R.N. Jadi v. Subhashchandra 2007 (3) RCR (Civil) 588***, wherein it was opined that the grant of extension of time beyond 30 days is not automatic. The power of the court has to be exercised with caution and for adequate reasons to be recorded and extension of time beyond 90 days of service of summons must be granted only based on a clear satisfaction of the justification for granting such extension. The period prescribed under Order 8, Rule 1 CPC should generally be adhered to and the extension should be in exceptional cases.

The relevant paras thereof are extracted below:-

"14. It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock-outs. But how far that

concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in Kailash v. Nankhu and others, 2005 (4) SCC 480 which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigour of that provision or to mitigate genuine hardship. It was in that context that in Kailash v. Nankhu and others (supra) it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by the Code and the power inhering in the court in terms of Section 148 of the Code. Kailash is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

15. A dispensation that makes Order 8, Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in Allen v. Sir Alfred Mc Alpine & Sons, (1968) 1 All ER 543 that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?"

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12. Similar view was expressed by Hon'ble the Supreme Court in *Mohammed Yusuf v. Faij Mohammed and others 2009 (1) RCR (Civil) 633* and in *Sandeep Thapar v. SME Technologies Private Limited 2014 (1) RCR (Civil) 729*.

13. Provisions contained in Order VIII Rule 1 CPC though ought to be adhered to but learned Court below could have still permitted petitioner to file written statement subject to certain penalty as a deterrent. Otherwise also, provisions contained in Order 8 Rule 1 have been held to be directory in nature by the Hon'ble Supreme Court. The Court should not, therefore, be too harsh to disallow filing of written statement.

14. Keeping in view the facts and circumstances of the case and by considering the position of law as discussed above, the instant petition is allowed and the impugned order dated 05.05.2023 is set aside. Petitioners are granted one opportunity to file written statement subject to payment of Rs.5,000/- as costs to be paid to the respondent-plaintiff on the next date of hearing before the trial Court. Respondent-plaintiff shall also be given an effective opportunity to file replication to the written statement of petitioners, if he so desires.

29.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No