

CR-4239-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-4239-2023 (O&M)
Decided on : 16.08.2023

Ramesh Dhankhar Through his LRs

. . . Petitioner(s)

Versus

Bijender Singh and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Ankur Dua, Advocate
for the petitioner(s).

SANJAY VASHISTH, J. (Oral)

CM-13175-CII-2023

i. This is an application filed under Section 5 of the Limitation Act, 1963 read with Section 151 CPC, for seeking condonation of delay of 77 days in filing the present appeal.

ii. Notice of this application was issued.

iii. Mr. Naveen Kumar, Mr. Arman Goyal, and Mr. Nalin Singhal, Advocates, put in appearance on behalf of the non-applicant/respondent No.1, and file their *Vakalatnama*/Power of Attorney, in Court today, which is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

iv. Counsel for non-applicant/respondent No.1 prays for taking up the matter for hearing of the arguments, because in the main suit, proceedings in regard to the recording of evidence of the plaintiff, have been stayed.

iv. While being confronted to the submissions of the applicants-petitioners, recorded before this Court, in its order dated 31.07.2023, counsel appearing on behalf of non-applicant/respondent No.1 (contesting one), does

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not dispute the factual position/status of the proceedings recorded in the said order.

v. Counsel appearing on behalf of non-applicant/respondent No.1 (plaintiff) submits that for the purpose of early disposal of the present revision petition, he does not oppose the prayer made by the applicants-petitioners *qua* seeking condonation of delay of 77 days in filing the present revision petition before this Court.

vi. In view of above, prayer made in the application is **allowed**, consequently, delay of 77 days in filing the revision petition is hereby condoned.

CM stands disposed of.

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1. Present revision petition has been preferred by the petitioners (LRs of defendant No.1) against the impugned order dated 03.02.2023, passed by learned Civil Judge (Jr. Divn.), Rohtak, whereby, application under Order VIII Rule 1 & 10 CPC, filed by respondent No.1 (plaintiff) was allowed, and defence of the petitioners (LRs of defendant No.1) has been ordered to be struck off.

2. Learned counsel for the petitioners submits that suit for specific performance filed by one Bijender Singh (respondent No.1-plaintiff), is pending before the Court of Civil Judge (Sr. Divn.), Rohtak. In the said suit, vide order dated 17.02.2021 (P-5), legal heirs of the deceased – Ramesh Dhankhar (petitioners herein) were impleaded, and after appearing in the proceedings of the suit, legal heirs of deceased – Ramesh Dhankhar, came to know about the proceedings before the trial Court. They prayed for some time to file written statement/reply in the matter. However, due to spread of pandemic COVID-19, matter was not taken up on several dates i.e. on

05.05.2021, 13.09.2021, 01.12.2021. Thereafter, on 24.02.2022 (P-7), an application under Order VIII Rules 1 & 10 CPC, was moved by respondent No.1 (plaintiff) for closing the opportunity for filing written statement by LRs of defendant No.1. Ultimately, vide impugned order dated 03.02.2023, defence of petitioners/LRs of defendant No.1, was struck off.

3. Learned counsel for the petitioners further submits that in fact, after the death of deceased/defendant No.1 – Ramesh Dhankhar, his wife and son were impleaded as legal representatives in the suit proceedings, but they were not aware of the Court proceedings and filing of application under Order VIII Rules 1 & 10 CPC, by the plaintiff. Thus, due to death of defendant No.1, his family was under mental trauma, and petitioner No.1(a) being a widow lady, was under the burden of taking care of her family, therefore, 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. Learned counsel appearing on behalf of respondent No.1/plaintiff, objects for granting any further opportunity to the petitioners/LRs of defendant No.1 for filing their written statement. Counsel submits that it will be sheer wastage of time, as they have adopted casual approach, despite of giving several opportunities.

6. I have heard learned counsel for the parties and perused the case file.

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 convenient 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 03.02.2023 to the extent of striking off the defence of LR's of defendant No. 1 (petitioners herein)**, and consequently, grant one more effective opportunity to the LR's defendant No.1 (petitioners herein) for filing their written statement, on or before 14.09.2023, the date fixed before the learned Trial Court, and then to re-frame the issues afresh, if so required. **However, keeping in view the fact that defendant/petitioner No.1(a) is a widow lady, in the interest of justice, this Court does not deem it appropriate to impose cost upon her.**

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

Civil Miscellaneous Application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

August 16, 2023

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No