

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

**Civil Revision No. 4272 of 2023(O&M)
Date of Decision: 31.07.2023**

Phool Chand & Ors.

...Petitioners

Versus

Prem Singh

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Rakesh Gupta, Advocate
For the petitioners.**

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioners/defendants against the order dated 15.05.2023 (Annexure P-1) passed by the Court of learned Civil Judge (Jr.Divn.), Patiala whereby an application filed by the respondent/ plaintiff for striking off the defence of the petitioners on account of non filing of written statement within prescribed statutory period, was allowed.

2. The counsel for the petitioners submits that on receiving the notice of suit, petitioners appeared before the learned trial Court for the first time on 06.10.2022 and thereafter time was granted to them to file written statement and petitioners filed written statement on 16.03.2023 and the same was taken on record by the learned trial Court. The counsel for the petitioners further submits that delay in filing of the written statement occurred as in the interregnum period petitioners filed one application to

direct the respondent/ plaintiff to submit site plan with better particulars regarding site in dispute. That after the filing of written statement, respondent/ plaintiff filed an application to strike off the defence of the petitioners as they failed to file written statement within 90 days from the date of appearance i.e. 06.10.2022. The counsel for the petitioners further submits that the said application was allowed by the learned trial Court vide order (Annexure P-1) while relying on the decision of Hon'ble Supreme Court in **M/s SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors. 2019 (2) RCR (Civil) 249**. The counsel for the petitioners further submits that the aforesaid judgment was passed by the Hon'ble Supreme Court in a matter relating to Commercial Courts, whereas the present suit is a suit simpliciter for permanent injunction to restrain the petitioners from encroaching the private passage. The counsel for the petitioners further submits that the aforesaid case law is not applicable to the case in hand and thus the learned trial Court fell into error. In support of his contentions, the counsel for petitioners has referred to **Raj Process Equipments & Systems Pvt. Ltd. & Ors. Vs. Honest Derivatives Pvt. Ltd. 2023(1) RCR(Civil) 511**

3. I have considered the submissions made by counsel for the petitioners.

4. The Hon'ble Supreme Court in **Raj Process Equipments & Systems Pvt. Ltd.'s** case (supra) while taking into consideration the law laid down in **SCG Contract's** case (supra) held that the suit that became the subject matter of dispute in SCG Contract's case (supra) appears to have been filed before the Commercial Court and not before the normal Civil Court and in so far as normal Civil Courts are concerned, it is the proviso to

Order 8 Rule 1 CPC which applies. The Hon'ble Apex Court further observed that in **Salem Advocate Bar Association Vs. Union of India (2005) 6 SCC 344** the Court held that the proviso to Rule 1 of Order 8 CPC is directory and not mandatory and that the decision in SCG Contract's case (supra) is by 2-Members Bench while the decision in Salem Advocate Bar Association's case (supra) was rendered by 3-Members Bench and therefore what is to be applied to normal Civil Courts is Order 8 Rule 1 and the interpretation given to the same in Salem Advocate Bar Association's case (supra). Consequently, the Hon'ble Apex Court allowed the appeal and the Commercial Court was directed to take on record the written statement filed by the appellants and proceed with the hearing of the case on merits.

5. Prior to that even in **Bharat Kalra Vs. Raj Kishan Chhabra, 2022(3) Apex Court Judgments (SC) 598**, the Hon'ble Apex Court condoned delay of 193 days in filing the written statement and allowed the appeal with direction that the written statement already filed is to be taken on record.

6. Further, it is settled law that the procedural laws are meant for imparting substantial justice and should not be invoked to obstruct the judicial proceedings simply on hyper-technical grounds.

7. In light of the above, this Court is of the considered opinion that the impugned order is liable to be set aside. Consequently, the instant revision petition is allowed and impugned order dated 15.05.2023 (Annexure P-1) is set aside and written statement already filed by the petitioners is directed to be taken on record and trial Court should proceed further with the hearing of the suit on merits.

8. Keeping in view the nature of order being passed, no notice is required to be issued to the respondents. However, if they feel dis-satisfied with this order, they may move an application to recall the same.

(KARAMJIT SINGH)
JUDGE

31.07.2023

Jiten

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No