

118 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 4380 of 2023(O&M)
Date of Decision: 04.08.2023

Hardev Singh & Anr.

...Petitioners

Versus

Amarjit Kaur & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Bikramjit Singh Bajwa, Advocate
For the petitioners.

KARAMJIT SINGH, J.

1. The present revision petition has been filed by the petitioners/defendants against the order dated 28.04.2023 (Annexure P-3) passed by the Court of learned Civil Judge (Jr. Divn.), Batala, whereby the defence of the petitioners has been struck off on account of non filing of written statement within prescribed statutory period.

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 07.09.2022 and thereafter matter was referred to Lok Adalat vide order dated 01.11.2022 but the Lok Adalat referred back the same to the trial Court vide order dated 12.11.2022 and finally the impugned order was passed by the trial Court on 28.04.2023 whereby the defence of the petitioners was struck off. The counsel for the petitioners further submits that there was no intentional delay on the part of the petitioners to file the written statement. It is further submitted that if the petitioners are not

allowed to file written statement it will cause great prejudice to them. So, prayer is made that one more opportunity be granted to the petitioners to file the written statement.

3. The Hon'ble Apex Court in **Salem Advocate Bar Association Vs. Union of India (2005) 6 SCC 344** held that the proviso to Rule 1 of Order 8 CPC is directory and not mandatory. Further, 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. Recently also, the Hon'ble Supreme Court in **Raj Process Equipments & Systems Pvt. Ltd. & Ors. Vs. Honest Derivatives Pvt. Ltd. 2023(1) RCR(Civil) 511** has held that the ratio laid down in Salem Advocate Bar Association's case (supra) is to be applied to normal civil Courts with regard to provision of Order 8 Rule 1 CPC.

4. It is also settled law that procedural provisions of law are meant for imparting substantial justice and should not be invoked to hamper the judicial proceedings by following hyper-technical approach. In case the petitioners are not permitted to file written statement, it is definitely going to adversely effect the case of the petitioners.

5. In the light of the above, this Court is of the view that impugned order is liable to be set aside. Consequently, the instant revision petition is allowed and impugned order dated 28.04.2023 (Annexure P-3) is set aside and petitioners are given one last opportunity to file their written statement which is to be taken on record by the learned trial Court subject to costs of Rs.10,000/- which is to be paid by the petitioners to the other party on the next date fixed in the trial Court.

6. 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.

04.08.2023
Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No