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

CR-4690-2023

Date of Decision:- 23.08.2023

M/S SPARTANS CLUB AND ANOTHER

....Petitioners

Vs.

SATYAWATI AND OTHERS

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Ms. Shifali Goyal, Advocate for the petitioners.

AMARJOT BHATTI, J. (Oral)

1. The petitioners have filed the present revision for quashing of order dated 29.05.2023, Annexure P-8, passed by the Court of learned Civil Judge (Jr. Divn.), Faridabad whereby the application under Order 8 Rules 1 & 2 CPC filed by the respondents for striking off their defence has been wrongly and arbitrarily allowed.

2. It is argued that the respondents had filed suit for ejectment and recovery of arrears of rent against the petitioners which was pending in the Court of Civil Judge (Jr. Divn.), Faridabad. The copy of plaint is Annexure P-1. The present petitioners appeared in said civil suit and filed application under Order 7 Rule 11 CPC dated 20.07.2022 for the rejection of plaint as it was not properly valued for the purpose of court fee. Copy of application is Annexures P-2. The respondents/plaintiffs also filed application under Order 8 Rules 1 and 2 read with Section 151 CPC on

01.09.2022 to strike off their defence on the ground that the written statement was not filed within the statutory time period. The application is Annexure P-3. The reply to the said application was filed and there was specific objection that application under Order 7 Rule 11 CPC for rejection of plaint was already pending as requisite court fee was not deposited. The reply to the said application is Annexure P-4. The trial Court disposed of the application under Order 7 Rule 11 CPC vide order dated 16.03.2023, Annexure P-5, granting time to the respondents/plaintiffs to make good the deficiency of court fee. The written statement was filed by the petitioner on 24.05.2023 before the disposal of application under Order 8 Rules 1 and 2 CPC. Once the written statement was taken on record there was no occasion for the disposal of application under Order 8 Rules 1 and 2 CPC. The order dated 24.05.2023 is Annexure P-6. The copy of written statement is Annexure P-7. There was no intentional delay on the part of present petitioners in filing the written statement. The impugned order dated 29.05.2023, Annexure P-8, has been passed without any justification. In-fact much time was consumed in the disposal of application under Order 7 Rule 11 CPC. Moreover, the period of 90 days for filing the written statement is not mandatory and it could have been extended. Therefore, the learned trial Court has committed material irregularity by passing impugned order dated 29.05.2023, Annexure P-8, vide which their defence has been struck off.

3. I have considered the arguments and have gone through the record carefully. The respondents/plaintiffs filed suit for ejectment and recovery of arrears of rent and mesne profits against the present petitioners. After the service of respondents, the present petitioners filed

application on 20.07.2022 under Order 7 Rule 11 CPC read with Section 151 CPC for rejection of plaint which is Annexure P-2. Thereafter, the respondents/plaintiffs also filed application under Order 8 Rules 1 and 2 to strike off the defence of the defendants/present petitioners by filing application on 01.09.2022 which is Annexure P-3. The application under Order 7 Rule 11 CPC was allowed vide order dated 16.03.2023, Annexure P-5 and the plaintiffs were granted time to deposit the court fee as per law. It is also matter of record that on 24.05.2023, the written statement was filed and the affidavit was also taken on record on 29.05.2023. However, the written statement was taken on record subject to the disposal of pending application. Copy of order dated 24.05.2023 is Annexure P-6. The fact remains that the written statement was filed by the petitioners on 24.05.2023 and the application under Order 8 Rules 1 and 2 was allowed by passing impugned order dated 29.05.2023 (Annexure P-8) vide which the defence of the present petitioners was struck off. The purpose of Order 8 Rules 1 and 2 was to expedite the trial. It cannot be ignored that some time was consumed for the disposal of application under Order 7 Rule 11 CPC. Moreover, the time limit fixed for filing of written statement under Order 8 Rule 1 CPC is not mandatory except in a commercial suit. Therefore, once the written statement was already filed by the present petitioners, the passing of impugned order dated 29.05.2023 (Annexure P-8) was harsh and not justified. The right of the petitioners/defendants to defend their case cannot be declined on hyper technical ground especially when the written statement as well as affidavit were already taken on record. Therefore, the Civil Revision preferred by the petitioners/defendants is accepted and the impugned order dated

29.05.2023 (Annexure P-8), passed by the Court of Civil Judge (Jr. Divn.),
Faridabad is accordingly set aside.

The Civil Revision is accordingly disposed of.

Pending applications, if any, shall also stand disposed of.

23.08.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No