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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on : 08.08.2023

Shakuntla @ Santra Devi

. . . Petitioner(s)

Versus

Bhoop Singh

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Mukesh Yadav, Advocate
for the petitioner(s).

Mr. Sandeep Kumar Yadav, Advocate
for the respondent(s).

SANJAY VASHISTH, J. (Oral)

1. Present revision petition has been preferred by the petitioner (sole defendant) – Shakuntla @ Santra Devi widow of Raghubir, challenging the impugned order dated 19.10.2021 (P-9), passed by learned Civil Judge (Jr. Divn.), Mohindergarh, whereby, defence of the petitioner/defendant has been ordered to be struck off, on account of non-filing of the written statement within the prescribed time. Besides, there is challenge to the order dated 20.07.2022 (P-14), passed by learned Civil Judge (Jr. Divn.), Mohindergarh, whereby, evidence on behalf of the defendant/petitioner herein, has been closed by Court order.

2. Learned counsel for the petitioner submits that suit for specific performance of the contract, filed by the respondent (sole plaintiff), is pending before the Court of Civil Judge (Jr. Divn.), Mohindergarh. In the said suit, defendant (petitioner herein) had appeared before the trial Court after coming to know of the proceedings before it. Yet, on account of some unavoidable circumstances, necessary instructions could not be passed on to

the representing counsel before the trial Court for preparation of the written statement on her behalf. Accordingly, vide order dated 19.10.2021 (P-9), defence of the petitioner/defendant, was struck off, and later on, vide order dated 20.07.2022 (P-14), evidence on behalf of the petitioner/defendant has also been closed by the Trial Court.

3. Learned counsel for the petitioner/defendant further submits that due to some unavoidable circumstances, petitioner/defendant was also not in contact with her counsel, representing her before the Trial Court. To substantiate the said fact, counsel refers to the zimni order dated 26.07.2022 (P-15), wherein, on request of counsel representing her before Trial Court, court notice was issued to her for 10.08.2022, as the said counsel was not in contact with her. However, due to inadvertent mistake of concerned Court Ahlmad, said court notice could not be issued to her. Said fact is also mentioned in the zimni order dated 10.08.2022 (P-16), vide which, fresh court notice were issued to the defendant for 05.09.2022. Thus, under such compelling circumstances, petitioner/defendant 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 petitioner/defendant, subject to the payment of some cost also, requisite written statement can be filed by the petitioner/defendant.

4. Learned counsel for the petitioner 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:-

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“ 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. Upon notice of motion having been issued, Mr. Sandeep Kumar Yadav, Advocate, is already putting in appearance on behalf of the respondent/plaintiff. He objects for granting any further opportunity to the petitioner/defendant for filing her written statement. He submits that it will be sheer wastage of time, as the petitioner/defendant has adopted casual approach, despite of giving several opportunities.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. From perusal of the zimni orders, which are appended with present revision petition, right from 21.09.2020, it is noticed by the Court

that the petitioner (defendant) has been duly represented through her counsel, Mr. P.K. Pilania, Advocate. Despite that no written statement was filed within the stipulated time. Attention of this Court, has been drawn to the order dated 26.07.2022 (P-15), whereby, a request was made by counsel for the defendant to issue court notice against the defendant. Accordingly, court notice was issued to defendant for 10.08.2022. Order dated 10.08.2022, reflects that due to the mistake of the Court Ahlmad, court notice could not be issued to the defendant. Though, suit proceedings took place after the striking off the defence by the Court order dated 19.10.2021 (P-9), but as a matter of fact, petitioner never received fresh Court notice, as ordered by it on 26.07.2022 (P-15). Undoubtedly, either there is a mistake, on the part of the petitioner/defendant herself or there may be any circumstance adverse to the situation, compelled her to not to allow filing of the written statement.

8. Be that as it may, this Court has already taken note of the necessity of the filing of written statement and completion of the pleadings before the Court, more in the interest of imparting justice to the concerned parties. It is also noticed by the Court that the petitioner/defendant is a widow lady of aged about 57 years.

9. Besides above, 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. As per the view point of this Court, it is always good 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

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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.

10. Considering the circumstances in its totality, **I hereby deem it appropriate to set-aside the impugned order dated 19.10.2021 (P-9) to the extent of striking off the defense of defendant (petitioner herein), and also the impugned order dated 20.07.2022 (P-14), whereby, evidence on behalf of the defendant/petitioner has been closed by Court order.** Accordingly, defendant (petitioner herein) is granted one more effective opportunity for filing her written statement, on or before the next date of hearing fixed before the Trial Court, and then to re-frame the issues afresh, if so required. **However, it would be subject to payment of Rs.10,000/- as costs, which would be paid to the plaintiff (respondent herein) before the Trial Court.**

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

It is, however, made clear that if petitioner/defendant fails to file her written statement on or before the next date of hearing, fixed before the Trial Court, no further opportunity would be granted to her for the said purpose.

(SANJAY VASHISTH)
JUDGE

August 08, 2023

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No