

CR-5134-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-5134-2023 (O&M)
Decided on : 05.09.2023

Pritam Singh and others

. . . Petitioner(s)

Versus

Bimla Devi and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Mayank Sharma, Advocate and
Mr. Satender Kumar, Advocate, for the petitioner(s).

SANJAY VASHISTH, J. (Oral)

CM-16099-CII-2023

This is an application, under Rule 3(A)(i), Chapter 6, Part-B, Volume-V, of the High Court Rules and Orders, seeking leave to appear, act or plead before this Court.

For the reasons mentioned in the application, the same is allowed as prayed for.

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1. Present revision petition has been preferred by the petitioners (defendants No.4, 5, 6 & 34) against the impugned order dated 16.02.2023 (P-1), passed by Ld. Civil Judge (Jr. Div.), Bhiwani, whereby, defence of the defendants No.2 to 6, 18 & 34, has been ordered to be struck off.

2. Learned counsel for the petitioners submits that suit for partition and permanent injunction filed by one Bimla Devi (respondent No.1-plaintiff), is pending before the Court of Civil Judge (Jr. Divn.), Bhiwani. In the said suit, defendants No.4, 5, 6 & 34 (petitioners herein) had appeared before the trial Court after coming to know of the proceedings before them. However, the counsel engaged by the petitioners/defendants

No.4, 5, 6 & 34, unfortunately, met with an accident, consequently, written statement could not be filed, despite being prepared on time. To support his submission, counsel for the petitioners has also appended a medical certificate dated 02.08.2023, issued by the reputed hospital of the area as Annexure P-4. Further submits that although in the impugned order dated 16.02.2023 (P-1), presence of their counsel is marked, but in fact, he was not present in Court on the said date, as he was on bed rest from 25.01.2023 till 26.02.2023, due to fracture suffered by him in the said accident. Still, vide order dated 16.02.2023 (P-1), defense of petitioners/defendants No.4, 5, 6 & 34, was struck off.

3. Learned counsel for the petitioners further submits that after passing of the impugned order (P-1), case has been adjourned four times, and said suit is still on the appearance stage and plaintiff's evidence is yet to be recorded. Thus, the suit is still at an initial stage, and the petitioners/defendants No.4, 5, 6 & 34, deserves one more opportunity to file their written statement, and if no such opportunity is granted to them to file their reply, they will suffer an irreparable loss.

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

6. This Court does realize that for deciding the petition, there is no need to call for the respondent(s) for the issue involved herein. Rather, same would be sheer waste of time for no gain to any of the party to the *lis*. If written statement of defendants No.4, 5, 6 & 34, is available before the Court, it would be convenient for the Court also to decide the controversy

involved.

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. 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 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 16.02.2023 (P-1) to the extent of striking off the defense of defendants No. 4, 5, 6 & 34 (petitioners herein), and consequently, grant one more effective opportunity to defendants No.4, 5, 6 & 34 (petitioners herein) for filing their written statement, on or before 19.09.2023, the next date fixed before the Trial Court. However, it would be subject to payment of Rs.5,000/- as costs, which would be paid to the plaintiff (respondent No.1 herein) before the Trial Court.**

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

(SANJAY VASHISTH)
JUDGE

September 05, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*