

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CR-4059-2022 (O&M)
Date of decision: 09.05.2023

HARWINDER SINGH ...Petitioner
VS
GURMIT KAUR AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Deepak Arora, Advocate,
For the petitioner.

None for the respondents, despite service.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 16.11.2021 (Annexure P-2) passed by learned Civil Judge (Junior Division), Ludhiana, whereby defence of petitioner/defendant No.2 was struck off and prays that one opportunity be given to petitioner to file written statement.

2. Succinct facts first.

2.1 Respondents No.1 and 2-plaintiffs filed a suit for permanent injunction restraining petitioner and pro forma respondent No.3 (defendants) from interfering in the peaceful possession of plaintiffs in property measuring 240 sq. yds and declaration to the effect that transfer deed bearing Vasika No.2018/19/106/1/4623 dated 08.10.2018 executed by defendant No.1/pro forma respondent No.3-Gurmit Kaur daughter of Bawa Singh in favour of defendant No.2/petitioner Harwinder Singh be declared as null and void, respondent No.3 impersonated herself as plaintiff No.1/respondent No.1 herein before the revenue authorities.

2.2 Petitioner/defendant No.2 appeared through counsel on 29.07.2021 and case was adjourned for filing written statement for 16.09.2021. On 16.09.2021, matter was again adjourned to 27.10.2021. On resumed hearing on 27.10.2021, on

account of non-filing of written statement learned Court below again adjourned the matter subjecting the parties to deposit costs of Rs.700/- before District Legal Services Authority. Vide impugned order dated 16.11.2021 (Annexure P-2), defence of petitioner and pro forma respondent No.3 was struck off by learned Court below by observing that defendants failed to file their written statement within statutory period and several opportunities have been availed to file the same and even costs have not been deposited.

3. Expanding his arguments, learned counsel would submit that impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, petitioner/defendant No.2 may be permitted to file written statement in the interest of justice and equity.

4. None appears for respondents No.1 and 2, despite service, which is deeming suggestive that respondents have no opposition to the revision petition being allowed.

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

6. I am of the view that provisions of Order 8 Rule 1 CPC, ordinarily ought to be adhered to, but learned Court below could have permitted petitioner/defendant No.2 to file written statement subject to certain penalty as a deterrent. Otherwise also, provisions contained in Order 8 Rule 1, *ibid*, have been held to be directory in nature by the Supreme Court in **Salem Bar Association Vs. UOI**,¹. The Courts should not, therefore, be too harsh to strike off defence of defendant at very early stage.

7. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases by filing written statement ought not to be taken away by the Court except in a case of their deliberate omission/failure to file written statement, particularly when the other side can be

compensated with costs. Prejudice would indeed be caused to petitioner herein, unless afforded an opportunity to file written statement.

7.1. Trial in the suit may lead to unjust consequences in the absence of an opportunity to petitioner/defendant No.2 to file written statement.

8. Learned counsel for petitioner/defendant No.2 undertakes to file the written statement on the next adjourned date, subject to terms and conditions, as may be imposed.

9. For the foregoing reasons, I deem it appropriate to grant one opportunity to petitioner/defendant No.2 to file written statement, subject to costs of Rs.5,000/- to be paid to plaintiffs/respondents No.1 and 2, which shall be a condition precedent. If the costs are not paid, as directed, the impugned order shall stand restored. To that extent, the impugned order is modified and the revision petition is allowed.

10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

09.05.2023
vandana

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