

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

Sr. No.120

CR-4130-2022

Date of Decision: 23.03.2023

STAR ENTERTAINERS

....Petitioner

Versus

DREAM WORK PRODUCTIONS AND ANOTHER Respondents

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr. Mohit Vashishat, Advocate for the petitioner.

None for respondent No.1.

ARCHANA PURI, J. (ORAL)

As per the office report, service of respondent No.1 has been duly effected, but however, none has made appearance on behalf of the said respondent. As such, respondent No.1 is proceeded against *ex parte*.

So far as service of respondent No.2 is concerned, notice has not been received back. However, at this stage, learned counsel submits that respondent No.2 (who is defendant No.1 before learned Lower Court) has already been proceeded against *ex parte* before learned Lower Court.

In these circumstances, the service of respondent No.2 is dispensed with.

Challenge in the present revision petition is to the order dated **16.08.2022 (Annexure P-5)**, passed by learned Lower Court, whereby the defence of the petitioner (who was defendant No.2 before learned Lower Court) has been struck off.

It is submitted by learned counsel for the petitioner that an agreement to sell dated 29.08.2018, which has been relied upon by the respondent/plaintiff in the suit, copy of agreement was required to be

produced, but however, the same had not been produced, even despite the oral submission made by learned counsel for the petitioner before learned Lower Court and precisely on this account, written statement was not filed.

To so substantiate his submission, learned counsel has already placed on record various zimini orders passed by learned Lower Court.

Perusal of the zimini orders reveal that the petitioner (defendant No.2), made appearance before learned Lower Court on 15.11.2021 and the case was further adjourned to 10.12.2021. On 10.12.2021, again the matter was adjourned to 19.01.2022, as the present petitioner had not filed the written statement. Thereafter, the case was further adjourned from 19.01.2022 to 22.03.2022 and since the presiding officer was on medical leave from 18.03.2022 to 15.04.2022, the case was further adjourned from 22.03.2022 to 23.05.2022.

On 23.05.2022 again, written statement was not filed and last opportunity was given to file written statement and even cost of Rs.200/- was also imposed and thereupon, the case was adjourned further for 16.08.2022. On 16.08.2022, the impugned order was passed, when the written statement was not filed, and thereby the defence of the petitioner (defendant No.2) had been struck off, on account of non-filing of the written statement.

The zimini orders, as detailed aforesaid, do not state about the submission, so made, for the production of the agreement to sell dated 29.08.2018 by respondent No.1/plaintiff. However, it is pertinent to mention that on 16.08.2022, beside passing the order of striking of the defence of the petitioner, again one another order was passed, which

is reproduced in verbatim as hereingiven:-

“File taken up again at 4.30 pm. The counsel appeared for placing on record the copy of the agreement between the plaintiff and defendant No.2 as per which defendant No.2 requires the copy for filing of the written statement. The counsel was made aware of the order already passed. Accordingly, the present application stands dismissed, as being infructuous. Now to come up on 30.09.2022 for PWs.”

Perusal of the subsequent order passed on 16.08.2022 reveals about the counsel having come to place on record the copy of the agreement between plaintiff and defendant No.2, as per which, defendant No.2 was required to furnish the copy of agreement for filing of the written statement.

This observation, so made, in the zimini order, gives strength to the submission made by learned counsel for the petitioner about the request having been made orally to produce the agreement, only on which account the written statement was not filed.

Considering the aforesaid fact situation, as coming forth, the present revisioin petition is hereby accepted and the impugned order is set aside and only one opportunity is given to the petitioner to file the written statement on the date fixed before learned Lower Court, which is stated to be 15.05.2023.

23.03.2023

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**(ARCHANA PURI)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes/No