

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-16738-CII-2023 in/and
CR-4863-2023
Date of decision: 22.09.2023

Gian Kaur

....Petitioner

Versus

Hardeep Singh and Ors.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Sunil Agnihotri, Advocate for the petitioner.

AMARJOT BHATTI, J.

CM-16738-CII-2023

This is an application u/s 151 C.P.C. for preponement of the date of hearing of the main case from 06.12.2023 to any early date.

For the reasons stated in the application, the same is allowed and the main case is taken on board today itself.

The application is disposed of.

CR-4863-2023

1. The petitioner-Gian Kaur has filed present civil revision under Article 227 of the Constitution of India for setting aside impugned order dated 27.01.2023 (Annexure P-3) vide which the trial Court has struck off the defence of the present petitioner/defendant as she could not file her written statement on account of unavoidable circumstances.
2. It is pointed out that Hardeep Singh plaintiff filed suit for declaration against her and others that he is a co-sharer in joint possession of the properties as detailed in the plaint and further challenged the Will dated 26.08.2004 executed by Ginder Singh in favour of defendants No.2 and 3. It is pointed out that Gian Kaur the present petitioner is the mother

of Hardeep Singh plaintiff as well as mother of Tarlochan Singh and Sukhdev Singh defendants No.2 and 3. The copy of plaint is Annexure P-1. The counsel for petitioner/defendant No.1 referred to the zimni orders Annexure P2 according to which Mr. Ravneet Singh, Advocate appeared for the first time before the trial Court on 17.01.2022 and the case was adjourned for 10.02.2022 for filing of power of attorney as well as for filing written statement and reply to stay application. On the next date the power of attorney was not filed and it was further adjourned for 30.03.2022. On this date Mr. Ravneet Singh, Advocate filed power of attorney along with application under Order 7 Rule 11 CPC and the case was further adjourned for filing of its reply and this application was ultimately decided vide order dated 19.09.2022. Thereafter, again the case was fixed for filing of written statement but the counsel for the present petitioner did not file the written statement and ultimately the defence was struck off vide impugned order dated 27.01.2023. The learned counsel for the petitioner/defendant No.1 pointed out that she is old, illiterate lady and was fully dependent on the instructions of her counsel. Later on she has changed her counsel by engaging Mr. Vishal Mahajan, Advocate. It is prayed that she may be granted one opportunity to file written statement.

3. I have considered the arguments as well as the zimni orders placed on record. The present petitioner had engaged Mr. Ravneet Singh, Advocate who took two adjournments to file his power of attorney and on 30.03.2022, he moved application under 7 Rule 11 CPC, which was disposed of vide order dated 19.09.2022. Even thereafter, the learned Civil Judge (Junior Division) Mukerian gave five adjournments to file the written statement but it was not filed and ultimately the defence was struck

off as per order dated 27.01.2023. Considering this fact the learned Civil Judge (Junior Division) Mukerian gave more than sufficient time to the present petitioner to file the written statement but it was not filed and thereafter, the Court was left with no option but to struck off the defence of present petitioner.

I have also considered the nature of litigation. Hardeep Singh son of the present petitioner has filed suit for declaration against his mother including two brothers and has also challenged the Will dated 26.08.2004 allegedly executed by his father Ginder Singh. It cannot be disputed that the present petitioner Gian Kaur is an old lady and she was fully dependent on the instructions and the legal guidance provided to her by her counsel. It is always in the interest of justice that the matter is decided on merits by giving opportunity to both the sides to present their case. Therefore, considering the nature of litigation the written statement to be filed by Gian Kaur and the stand taken therein would be material for final adjudication of the case. No purpose would be served by giving notice to the respondent/plaintiff as it will involve unnecessary litigation expenditure and it will further add on in the delay of disposal of the case. Considering all the facts, lenient view is taken and the impugned order dated 27.01.2023 (Annexure P-3) is accordingly set aside by granting one effective opportunity to Gian Kaur to file her written statement subject to payment of cost to the respondent/plaintiff to the tune of Rs.10,000/-.

Accordingly, the present civil revision stands disposed of.

22.9.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

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