

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

Civil Revision No. 5109 of 2023(O&M)

Date of Decision: 20.09.2023

Gurjeet Singh

...Petitioner

Versus

Harkamalpreet Kaur

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Maninder Singh Saini, Advocate
For the petitioner.**

KARAMJIT SINGH, J.

1. The present revision petition has been filed by the petitioner Gurjeet Singh against the order dated 17.03.2023 (Annexure P-4) and order dated 26.05.2023 (Annexure P-5) passed by the Court of Principal Judge, Family Court, Ludhiana, camp Court Khanna whereby the defence of the petitioner has been struck off and the request made by the petitioner to recall the said order (Annexure P-4) has also been declined by the aforesaid Court.

2. The counsel for the petitioner, *inter alia*, submits that matrimonial dispute is going on between the parties and respondent Harkamalpreet Kaur has filed an application under Order 33 Rule 1 CPC for instituting the suit as an indigent person for recovery of arrears of maintenance amounting to Rs.14,40,000/- for the period from September, 2018 till date and for grant of future maintenance @ Rs.40,000/- per month by creating charge on the immoveable property of the petitioner fully detailed in the said application. The counsel for the petitioner further submits that on receipt of notice the petitioner put in appearance and moved an application to direct the respondent to produce the original documents on

record and the said application was declined by the Family Court concerned vide order dated 24.02.2023 (Annexure P-3). It is further submitted by counsel for the petitioner that as per his instructions, till date no formal order has been passed by the Court below to permit the respondent to file the suit as an indigent person and in the given circumstances there was no occasion for the learned trial Court to struck off the defence of the petitioner. The counsel for the petitioner further submits that the written reply/ written statement is ready and in case one opportunity is given to the petitioner, the same will be filed on the next date of hearing in the learned trial Court. The counsel for the petitioner further submits that the case is at its initial stage and if permission is given to the petitioner to file the written statement/ reply, no prejudice is caused to the respondent. So prayer is made that the present petition be allowed and one opportunity be granted to the petitioner to file reply/ written statement.

3. I have considered the submissions made by counsel for the petitioner.

4. Proviso to Rule 1 Order 8 CPC is directory and not mandatory in nature and the time limit provided under statute for filing the written statement in civil proceedings could be extended by the Court. In **Bharat Kalra Vs. Raj Kishan Chhabra 2022(3) Apex Court Judgments (SC) 598**, the Hon'ble Supreme Court condoned delay of 193 days in filing of written statement. Again the Hon'ble Apex Court in **Raj Process Equipments & Systems Pvt. Ltd. & Ors. Vs. Honest Derivatives Pvt. Ltd. 2023(1) RCR(Civil) 511** has reiterated that the time limit provided under statute for filing of a written statement is directory and not mandatory in nature.

5. Further in the present case it is not clear as to if the application filed by the respondent under Order 33 Rule 1 CPC has been formally allowed by the Family Court concerned with permission to sue as an indigent person. In case no such formal order has been passed, then there was no occasion for the Family Court concerned to struck off the defence of the petitioner. Even if any such permission is already granted to the respondent to sue as an indigent person, then also in the light of the case law referred above, the impugned orders are not sustainable.

6. In the light of above discussion, the present petition is allowed and impugned orders are set aside and one last opportunity is granted to the petitioner to file reply/ written statement by the next date fixed in the trial Court subject to costs of Rs.3000/- which is to be paid by the petitioner to the respondent at the time of filing of the written statement/ reply.

7. Keeping in view the circumstances mentioned above, this petition is being disposed of without issuing any notice to the opposite party. If respondent is summoned to contest this litigation, she will have to incur huge expenses to defend this case. However, liberty is granted to the respondent that if she feels dissatisfied with this order, she may move an application to recall the same.

20.09.2023

Jiten

(KARAMJIT SINGH)
JUDGE

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