

CR-5169-2023 (O&M)

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

Sr. No.139

**CR-5169-2023 (O&M)
Date of Decision: 05.09.2023**

SURAJ PAUL DIAS

....Petitioner

Versus

KAILASH AGGARWAL

.....Respondent

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr. A.L.Aggarwal, Advocate
for the petitioner.

ARCHANA PURI, J. (Oral)

Challenge in the present revision petition is to the order dated 15.05.2023 (Annexure P-1), passed by the Court below, whereby the defence of the petitioner has been struck off, on account of non-filing of the written statement.

Copies of the zimini orders have been filed by learned counsel for the petitioner, which are taken on record.

Learned counsel for the petitioner heard.

Perusal of the zimini orders reveals about the suit to have been dealt by the Court below for the first time on 17.06.2022 and thereafter, put up before the Duty Magistrate on 27.06.2022 and the case was adjourned further for 05.07.2022. On 05.07.2022, file had not been received at first instance and in the later part of the day only, the file was taken up and fresh order was passed about filing of the written statement. Thereafter, the case was adjourned for 03.10.2022 and it was observed in the said order, that it shall be the last opportunity to file written statement.

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On 03.10.2022, an application under Order VII Rule 11 CPC was filed and the case was adjourned to 06.02.2023, on which date the petitioner was proceeded against *ex parte*, due to non-appearance. However, vide order dated 09.05.2023, *ex parte* proceedings were set-aside, subject to payment of costs of Rs.10,000/-, which was since been paid on 11.05.2023, as evident from the order at Page 11 of the paper book. Thereafter, the case was adjourned further for 11.05.2023, for consideration on the application under Order VII Rule 11 CPC. However, on 15.05.2023, the application under Order VIII Rule 10 CPC was dismissed and on that very day, the defence of the petitioner was struck off, without providing any opportunity to file the written statement.

Keeping in view the aforesaid fact situation and in the interest of justice, the revision petition, as such is hereby accepted and the impugned order is set aside and one opportunity is given to the petitioner to file written statement, on the next date fixed.

However, on query by the Court, the date fixed before the Court below is tomorrow i.e. 06.09.2023.

In the given circumstances, the Court shall adjourn the case within a period of seven days since tomorrow i.e. 06.09.2023 and the petitioner shall file the written statement on the next date, so fixed by the Court below.

Accordingly, the instant revision petition stands disposed of.

(ARCHANA PURI)
JUDGE

05.09.2023
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Whether speaking/reasoned : Yes

Whether reportable : Yes/No