

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

323

CR-5286-2023(O&M)
Date of decision: 18.09.2023

Monika Dalal

....Petitioner

Versus

Subhash Chander Kapur and Anr.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Ms. Monika Dalal- petitioner-in-person.

AMARJOT BHATTI, J.

1. The petitioner-Monika Dalal has filed the present civil revision under Article 227 of the Constitution of India for setting aside all the orders dated 22.08.2023 (Annexure P-1) passed by learned Civil Judge (Junior Division), Gurugram in Civil Suit No.3237 of 2022 titled as ***“Subhash Chander Kapur & Anr. Vs. Monika Dalal”*** whereby the opportunity to file written statement has been intentionally and deliberately declined in a contemptuous manner by the learned Presiding Officer, in blatant violation of order dated 10.08.2023 passed by this Court in CR No.4549 of 2023 (Annexure P-2).

2. Arguments advanced by learned counsel for the petitioner Mr. Vineet Jakhar, Advocate and Ms. Avsi Malik and Mr. Rajat Mor, Advocates for respondents were heard in detail on the last date of hearing. The advocates are abstaining from work today. However, the petitioner is present in person.

3. Learned counsel for the petitioner argued that the petitioner

had approached this Court in CR No.4549 of 2023 in which order dated 10.08.2023 (Annexure P-2) was passed by this court vide which by taking a lenient view one effective opportunity was granted to the petitioner i.e. Ms. Monika Dalal to file written statement on the next date of hearing fixed before the trial Court, subject to the payment of cost of Rs.10,000/-, to be paid to the respondents/plaintiffs. The clerk of the counsel for the petitioner applied for certified copy of this order on the same day and it was prepared on 16.08.2023. The next date fixed before the trial Court was 11.08.2023. The counsel for the petitioner appeared before the learned trial Court and apprised about the status of CR No.4549 of 2023 which was allowed vide order dated 10.08.2023 and the order was not uploaded on the official website of the High Court. The learned trial Court verified this fact and adjourned the case to 22.08.2023. The copy of order is Annexure P-3. On 22.08.2023, surprisingly the learned counsel for respondents/plaintiffs presented the online copy of the order dated 10.08.2023 before the learned trial Court at 10:15 AM and following order was passed:-

“However, ld. counsel for defendant sought an adjournment on the ground that the order from the Hon’ble High court has not been received and accordingly matter was adjourned to 22.08.2023 i.e. today for awaiting orders of the Hon’ble High Court. As per order of Hon’ble High Court, the defendant was given one opportunity to file written-statement “next date fixed before the ld. Trial Court”. The said date was 11.08.2023, but it appears that despite having knowledge of this order, the counsel for defendant knowingly misled this Court and sought an adjournment on pretext of awaiting order of Hon’ble High Court whereas the defendant ought to have filed the written statement in this Court on 11.08.2023 itself as the same was indeed the “next date fixed before the ld. Trial Court.”

The learned Presiding Officer was having hostile behaviour and preconceived notion which can be gathered from the aforesaid order.

Surprisingly the file was taken up hurriedly at different intervals i.e. 10:15 AM, 11:00 AM and 11:30 AM. Learned counsel for the petitioner/respondent appeared and sought permission to file written statement and application under Order 7 Rule 11 CPC. He also requested the respondents/plaintiffs to accept the cost in cash but it was refused. Therefore, the petitioner was compelled to deposit the money in the account of the respondent. Thereafter, learned counsel for the petitioner/defendant came to know that the learned trial Court had passed the order at 12:00 noon in a hasty manner which is reproduced as under:-

“File put up at 12:00 noon. Case called several times, neither counsel for defendant has appeared nor any reply or written-statement has been filed. It is 12:05 PM and no further wait is warranted. Despite clear instructions, the counsel has not appeared and precious time of the Court is being wasted. The conduct of the defendant is worth-noting in as much as the defendant was proceeded against exparte vide order dated 25.08.2022. Thereafter, upon application moved by the defendant in this regard, order was set-aside subject to payment of cost to the plaintiff vide order dated 10.03.2023 and one opportunity was granted to file the written-statement. Despite that, the defendant failed to submit writtenstatement in this court and defence was struck of vide order dated 26.05.2023. Thereafter, defendant was granted opportunity by the Hon’ble High Court vide order dated 10.08.2023 passed in CR-4549-2023 subject to cost of Rs. 10,000/- to be paid to the plaintiff. However, even today, no such written-statement has been filed till 12:00 noon and no attempt has been made since morning to pay the cost to the plaintiff. There is not a single whisper of the same by the counsel for defendant. He has been just harping about the allegedly wrong cost imposed by this Court upon him and that the matter was not fixed for filing written-statement.

2. *From the above said conduct, it is apparent that the defendant is intentionally delaying the proceedings of the case and has created a mockery of the justice system. Despite ample opportunities, defendant has failed to abide by the orders of the court. The counsel for defendant misled the Court on 11.08.2023 by seeking adjournment to place on record the order of Hon’ble High Court whereas, he should have filed the written statement on 11.08.2023 in compliance of the order of the Hon’ble High Court.*

3. *Since, defendant has failed to file reply to application under Order XV Rule 5 CPC and also failed to file the written*

statement to the suit within the stipulated time and has also not paid the cost, till 12:20 PM, therefore, the Court is constrained to close the opportunity to file the same.”

After the deposit of cost in the account of respondents when the present petitioner approached the learned trial Court, he came to know about the order passed at 12:00 noon. He was not allowed to file his written statement and application under Order 7 Rule 11 CPC. The receipt regarding deposit of cost is Annexure P-4. Copy of application under Section 151 CPC is Annexure P-5, copy of written statement is Annexure P-6 and copy of application under Order 7 Rule 11 CPC is Annexure P-7. He has also placed on record one application addressed to District Judge, Gurugram to get CCTV footage of Court No.8A (Annexure P-8) and the copy of cause list dated 22.08.2023 is Annexure P-9.

Learned counsel for the petitioner pointed out that the learned Presiding Officer may be prompt and upright Judicial Officer but she has conducted the proceedings in a cavalier, mechanical manner, as a result the interest of the petitioner has been adversely affected. It is further pointed out that she reserves her right to move appropriate application for the transfer of the present suit from the said court. It is prayed that the impugned order dated 22.08.2023 (Annexure P-1) passed by the learned Civil Judge (Junior Division) Gurugram in the aforesaid civil suit whereby an opportunity was granted to her to file her written statement has been intentionally and deliberately declined in a contemptuous manner by the learned Presiding Officer, may kindly be set aside and suitable directions be given to the said Court as this Court deems it fit and appropriate in the peculiar facts and circumstances of the case.

4. The learned counsel for the respondents had already filed a

Caveat Petition No.4193 of 2023 pertaining to order dated 22.08.2023. Learned counsel for the respondents argued that all the facts detailed in the civil revision are false and without any basis. The perusal of order dated 22.08.2023 passed by learned Civil Judge (Junior Division) Gurugram (Annexure P-1) will clear the factual position. In fact the next date fixed in this case was 11.08.2023 and the case was adjourned to 22.08.2023 for awaiting orders of the Hon'ble High Court. On 22.08.2023, the present petitioner was not ready to comply the directions given by the Hon'ble High Court as per order dated 10.08.2023 (Annexure P-2). The case was repeatedly called from time to time even then neither the cost was deposited in the court nor the written statement was filed. Therefore, ultimately the file was again taken up at 12:00 noon and after passing detailed order the case was adjourned to 14.09.2023. Despite given ample opportunity to deposit the cost along with written statement, it was the petitioner who failed to comply the orders. Therefore, the present petitioner is not entitled to any relief and the civil revision deserves dismissal.

5. I have considered the arguments and have gone through the documents on record carefully. The factual position is not disputed regarding the fact that the present petitioner- Monika Dalal had filed CR No.4549-2023 against the respondents for setting aside the order dated 26.05.2023 passed by learned Civil Judge (Junior Division) Gurugram whereby the defence of the present petitioner was struck off in Civil Suit No.3237 of 2022 titled as ***“Subhash Chander Kapur & Anr. Vs. Monika Dalal”***. The said civil revision was allowed by this Court by passing order dated 10.08.2023 whereby taking a lenient view one effective opportunity

was granted to the petitioner to file written statement on the next date fixed before the learned trial Court subject to payment of cost of Rs.10,000/- to be paid to the respondents/plaintiffs. The copy of order dated 10.08.2023 is Annexure P-2. The aforesaid order was passed in the presence of learned counsel for both the parties and it was uploaded on the next day i.e. 11.08.2023 at 6:11 PM. The next date fixed before the learned trial Court was 11.08.2023. Since, the order was not received by the learned trial Court the Presiding Officer rightly adjourned the case from 11.08.2023 to 22.08.2023. Learned counsel for the present petitioner was fully aware that the written statement was to be filed subject to payment of cost as per the order dated 10.08.2023 (Annexure P-2). The learned counsel for the petitioner has placed on record copy of cause list of the cases fixed on 22.08.2023 (Annexure P-9), according to which the present case was listed at serial No.22. The case was taken up for the first time at 10:15 AM and following order was passed:-

“Today the case was fixed for awaiting further orders from Hon’ble High court. Accordingly, online printout of order dated 10.08.2023 passed in CR-4549-2023 has been placed on record by the counsel for plaintiff at 10:15 A.M. As per the order, the following directions have been passed - “Therefore, taking a lenient view, one effective opportunity is granted to the present petitioner to file written statement on the next date fixed before the ld. Trial Court subject to payment of cost of Rs. 10,000/- to be paid to the respondents/plaintiffs.”

As per the order, the defendant was granted one opportunity to file the written-statement in this court subject to payment of Rs. 10,000/-. Incidentally, the above-said order was passed on 10.08.2023 , whereas the next date of hearing fixed in this court being the trial Court was 11.08.2023 as the matter was adjourned from 04.08.2023 to 11.08.2023. However, ld. counsel for defendant sought an adjournment on the ground that the order from the Hon’ble High court has not been received and accordingly matter was adjourned to 22.08.2023 i.e. today for awaiting orders of the Hon’ble High Court. As per order of Hon’ble High Court, the defendant was given one opportunity to file written-statement “next date

fixed before the ld. Trial Court". The said date was 11.08.2023, but it appears that despite having knowledge of this order, the counsel for defendant knowingly misled this Court and sought an adjournment on pretext of awaiting order of Hon'ble High Court whereas the defendant ought to have filed the written statement in this Court on 11.08.2023 itself as the same was indeed the "next date fixed before the ld. Trial Court". Be that as it may, case was called several times since morning but none has appeared on behalf of defendant. Accordingly, counsel for plaintiff prayed of decision of application under Order XV Rule 5 of CPC as neither written-statement has been filed nor reply to this application has been filed and allegedly no rent has been paid by defendant from the past more than one year.

Heard. In the interest of justice, file be again taken up at 11:00 A.M".

Thereafter, the case was taken up at 11:00 AM the following order was passed:-

"File put up 11:00 A.M. Case was called several times, but none has appeared on behalf of defendant. It is already 11:15 A.M. Counsel for plaintiff again pressed for order on application under Order XV Rule 5 CPC, however, in the interest of justice, let matter be again taken up at 11:30 A.M."

The case was again taken up at 11:40 AM and following order was passed:-

File put up at 11:40 A.M. At this stage, counsel for defen - dant has appeared and sought an adjournment for filing of written-statement on the ground that today the matter was not specifically listed for filing of written statement in this Court and was instead listed for only awaiting order of Hon'ble High Court. The counsel also apprised the court about order of the Hon'ble High court, but neither did he make payment of costs imposed by the Hon'ble High court nor was willing to file the written-statement. The counsel persisted in his request for adjournment only on the ground that today the case was only fixed for awaiting order of Hon'ble High court and not for filing of written-statement as per the daily order passed on 11.08.2023 and hence, he is not required to file written-statement today. Counsel for defendant also stated at Bar that since, defence of the defendant was struck off vide order dated 26.05.2023, therefore, cost could not have been imposed by this Court on 04.08.2023 for failure to file reply to application under Order

XV Rule 5 CPC.

Heard and file perused. It appears that counsel for defendant is aggrieved by order dated 04.08.2023, however, the said order has not been challenged till date. The legal remedy available to the defendant has not been availed. Further, no application has been moved for waiving the cost imposed and no reasonable explanation has been given for non-filing of the reply when opportunity was granted by this Court in the interest of justice. Therefore, counsel for defendant is at liberty to pursue appropriate legal remedy if aggrieved by order dated 04.08.2023.

Further, the counsel insisted for adjournment for filing of written-statement. However, as per the order of the Hon'ble High Court an opportunity was granted for filing of written-statement "subject to payment of cost of Rs. 10,000/- to be paid to the respondents/plaintiffs." The above said order of the Hon'ble High court has not been complied with by the defendant and the costs have not been paid yet. Further, only one opportunity was granted by the Hon'ble High Court and therefore, this Court has no authority to further extend the time for filing of written statement by the defendant. Accordingly, request of the counsel for adjournment was declined. Thereafter, time was given till 12:00 noon to file the written-statement and pay the cost if so desired as the present matter has been pending since 29.07.2022 and more than one year has elapsed without payment of any rent and without filing of written-statement by defendant. However, agitated by the same, the counsel unnecessarily raised his voice and disturbed the court proceedings. He failed to maintain the decorum of the court. He pointed out that the Court timing is till 4:30 PM and hence, this Court ought to wait the entire day for the counsel. The conduct of the counsel was such that this Court is constrained to record the same in today's order. It is apparent that despite the fact that order of Hon'ble High Court dated 10.08.2023 was in the knowledge of the defendant since date of passing of the order and she very well knew that written-statement has to be filed on "next date fixed before the Id. Trial Court", the defendant failed to file the written-statement even today on frivolous grounds. The same is a sheer abuse of process of law. Therefore, the file be again taken up at 12:00 noon."

The file was again taken up at 12:00 noon and following order was passed:-

"File put up at 12:00 noon. Case called several times, neither counsel for defendant has appeared nor any reply or written-statement has been filed. It is 12:05 PM and no further wait is warranted. Despite clear instructions, the

counsel has not appeared and precious time of the Court is being wasted. The conduct of the defendant is worth-noting in as much as the defendant was proceeded against ex parte vide order dated 25.08.2022. Thereafter, upon application moved by the defendant in this regard, order was set-aside subject to payment of cost to the plaintiff vide order dated 10.03.2023 and one opportunity was granted to file the written-statement. Despite that, the defendant failed to submit written statement in this court and defence was struck off vide order dated 26.05.2023. Thereafter, defendant was granted opportunity by the Hon'ble High Court vide order dated 10.08.2023 passed in CR-4549-2023 subject to cost of Rs. 10,000/- to be paid to the plaintiff. However, even today, no such written-statement has been filed till 12:00 noon and no attempt has been made since morning to pay the cost to the plaintiff. There is not a single whisper of the same by the counsel for defendant. He has been just harping about the allegedly wrong cost imposed by this Court upon him and that the matter was not fixed for filing written statement.

2. From the above said conduct, it is apparent that the defendant is intentionally delaying the proceedings of the case and has created a mockery of the justice system. Despite ample opportunities, defendant has failed to abide by the orders of the court. The counsel for defendant misled the Court on 11.08.2023 by seeking adjournment to place on record the order of Hon'ble High Court whereas, he should have filed the written statement on 11.08.2023 in compliance of the order of the Hon'ble High Court.

3. Since, defendant has failed to file reply to application under Order XV Rule 5 CPC and also failed to file the written statement to the suit within the stipulated time and has also not paid the cost, till 12:20 PM, therefore, the Court is constrained to close the opportunity to file the same.

4. Arguments of plaintiff heard and file perused. As per submission of the counsel for plaintiff, the defendant is residing in the demised premises without payment of any rent since October 2022 and the total outstanding rent is Rs. 5,28,200/- till today. The said calculation and averment has not been rebutted by the defendant and this Court has no option but to believe the version of the plaintiff.

5. Now, as per order XV rule 5 CPC, the defendant is required to pay/deposit the admitted rent in the court on first date of hearing which is construed the date of filing of written-statement and in case the defendant failed to do so, defence is liable to be struck off. In the present case, the defendant has not admitted any rent due or rate of rent. However, the plaintiff has placed on record registered lease agreement wherein monthly rent is fixed at Rs. 48,300/- per month and the lease agreement appears to be signed by both the parties. There are multiple lease agreement between the parties to the suit implying of long and continued tenancy

between the parties. In the case of Anshul Jatana Vs. Iqbal Chand & Others, 2008 (4) RCR Civil 545 it was held that the rate of rent mentioned in the lease deed is the agreed rate of rent and there cannot be a difference between the “agreed rate of rent” and the “admitted rent” in reference to provisions of Order 15 Rule 5 CPC. Further, provision of Order XV rule 5 CPC is held to be mandatory in nature. Reliance is placed upon case of Jagdev Singh Vs. Balwant Kaur Grewal (P& H), 2012 (4) RCR Civil 457. Therefore, in view of the above discussion, application under Order XV rule 5 CPC is allowed and time is granted to defendant to make payment of arrears of rent to the tune of Rs. 5,28,200/- along with interest @ 9% P.A. as per rules on or before 14.09.2023.

5. The defendant is further directed to make payment of the monthly rent by 10th of every month to the plaintiff in his bank account during pendency of the suit. Now to come up on 14.09.2023 for awaiting above said compliance.

Thereafter, file was again taken up at 2:00 PM on the application filed under Section 151 CPC which is as under:-

“An application moved before me at 2:00 PM under Section 151 CPC on behalf of the defendant for putting up the file before this Court and setting aside the order dated 22.08.2023. The counsel has submitted that the order passed earlier today in his absence be set aside and prayed for allowing the defendant to file the written-statement and reply to application under Order XV rule 5 CPC. Heard. Papers perused. The defendant is relying upon order dated 10.08.2023 passed in CR-4549-2023 by Hon’ble High Court wherein the following directions have been passed- “Therefore, taking a lenient view, one effective opportunity is granted to the present petitioner to file written statement on the next date fixed before the ld. Trial Court subject to payment of cost of Rs. 10,000/- to be paid to the respondents/plaintiffs.”

However, the above said order has not been complied with by the defendant. The cost of Rs. 10,000/- imposed by Hon’ble High Court has not been paid to the plaintiff. There is no receipt or proof of payment attached with the present application. There is not even a whisper about payment of cost in the entire application and neither it is part of the prayer made. The order of the Hon’ble High Court is quite clear and categorical to the effect that opportunity given to the defendant is subject to payment of cost to the plaintiff. Whereas, payment of cost is condition precedent to the defendant exercising right to file written-statement. Therefore, in the absence of the costs paid or proof thereof,

the written-statement cannot be allowed to be filed. Also, no such written-statement has been attached with the present application. Even otherwise, as per the above said order and as discussed in daily order passed today, the next date of hearing before the ld. Trial Court was 11.08.2023 and therefore, today, the application moved by the defendant is not only time barred but is also without merit as the costs have not been paid.

Therefore, in view of the above, application at hand is dismissed.”

Despite passing of aforesaid orders from time to time the present petitioner did not file the written statement nor tendered cost to be paid to the plaintiffs. There was no direction to deposit the cost in the account of the plaintiff as it is done by the present petitioner. There is nothing on record to show that learned Civil Judge (Junior Division) Gurugram refused to accept the cost or the written statement as per the directions of this Court vide order dated 10.08.2023 (Annexure P-2). On 11.08.2023 in the absence of copy of orders passed by this Court the trial Court would have not been in a position to accept the written statement or the costs. Therefore, the first date for filing of the written statement and payment of costs was 22.08.2023. The aforesaid order Annexure P-2 clearly indicates that the counsel for the present petitioner was insisting for another date for filing of written statement which the learned Civil Judge (Junior Division) Gurugram rightly declined as per the order dated 10.08.2023 (Annexure P-2) as only one effective opportunity was to be granted to the present petitioner to file written statement subject to payment of cost. Therefore, the learned Civil Judge (Junior Division) Gurugram refused to give another date for filing of written statement. In fact it was the petitioner who has failed to comply the orders of this Court which was passed in the presence of her counsel. Even earlier the defence of present petitioner was struck off on account of not filing the written

statement on different dates and despite given one opportunity by this Court, the present petitioner failed to comply the orders of this Court. The Presiding Officer is duty bound to watch the interest of both the parties. Nobody can be permitted to take the system for granted.

Under these circumstances, I do not find any reason to interfere in the order dated 22.08.2023 (Annexure P-1) passed by learned Civil Judge (Junior Division) Gurugram during the course of the day from time to time and the same is accordingly upheld.

Accordingly, the present civil revision stands declined.

18.09.2023
Sunil Devi

(AMARJOT BHATTI)
JUDGE

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