

Punjab Financial Corporation

....Petitioner

versus

Sukhbir Singh Shergill and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Arshdeep Singh Arora, Advocate for the petitioner.

ARUN MONGA, J. (ORAL)

Present revision petition is against impugned order dated 30.07.2022 (Annexure P-2) passed by learned Additional District Judge (Presiding Officer, Commercial Courts), SAS Nagar, whereby in a suit for declaration and for recovery of Rs.7,11,29,984/- filed by respondents No.1 and 2/plaintiffs, written statement filed by petitioner-defendant No.3 on 07.09.2017, which was beyond the period of 120 days from the date of service, was taken off the record.

2. Learned counsel for petitioner-defendant No.3 contends that service upon defendant No.3 was completed on 12.04.2017 and written statement was filed on 07.09.2017. Written statement was signed and stamped on 03.08.2017 itself and may not have been filed before 07.09.2017 i.e., before the date of hearing. Period of 120 days lapsed on 12.08.2017.

2.1. Learned counsel further contends that Civil Suit was dismissed in default on 27.05.2019 and order for restoration of the same was passed on 10.01.2020. Therefore, the period for which it remained dismissed for non-prosecution i.e., over six months, it's benefit ought to have been given to

petitioner-defendant No.3, being a Government body. Summons were not issued under Commercial Courts Act, therefore, no fair opportunity was given to defendant No.3.

3. Given the nature of order being passed, there is no necessity to issue notice to respondents as no prejudice would be caused to them. Notice to respondents is thus dispensed with.

4. Heard.

5. It is borne out from record, as has also observed in the impugned order, that service on petitioner-Corporation was effected on or around 12.04.2017 and in ordinary course, written statement ought to have been filed within 30 days unless leave was granted by the Court below to extend the period upto 90 days, as per Order VIII Rule 1 of the Code of Civil Procedure, 1908. As against said requirement, petitioner signed and stamped the written statement on 03.08.2017, which is within permissible. As per justification of not immediately filing thereafter, it is stated that since slated date was 07.09.2017, learned counsel waited for said date to file the same in the Court as on which date, needful was done. Notwithstanding, vide impugned order, written statement was not accepted and was taken off the record on the ground that same has been filed after a period of 120 days.

6. Be that as it may, given the nature of dispute where recovery to the tune of more than Rs.7 Crores has been sought from petitioner and facts are highly disputed, it would be travesty of justice to conduct trial without there being any defence of petitioner.

7. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. Prejudice would indeed be caused to petitioner unless afforded an opportunity to file written

statement. Trial in the suit may lead to an unfair exercise as there would be no contest in the absence of written statement.

8. Provisions contained in Order VIII Rule 1 CPC, though ought to be adhered to, but learned Court below could have still permitted the petitioner to file written statement, subject to certain penalty as a deterrent. Provisions contained in Order VIII Rule 1 *ibid* have been held to be directory in nature by the Supreme Court in ***Salem Bar Association Vs. UOI, 2005(6) SCC 344***. The Courts should not, therefore, be too harsh to strike off the defense of defendants at early stage.

9. For the foregoing reasons, I deem it appropriate to quash the impugned order dated 30.07.2022 (Annexure P-2) and take on record written statement dated 07.09.2017 filed by petitioner-defendant No.3, subject to costs of Rs.20,000/- payable to respondents No.1 & 2-plaintiffs. To that extent, impugned order is modified and the revision petition is allowed, dispensing with notice to respondents.

10. Disposed of, accordingly.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 07, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No