

CR-6068-2023

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

127

CR-6068-2023

Decided on : 01.12.2023

Ishwar Singh

. . . Petitioner(s)

Versus

Baljeet Singh and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Wazir Singh, Advocate
for the petitioner(s).

SANJAY VASHISTH, J. (Oral)

1. By way of present revision petition, petitioner – Ishwar Singh (defendant No.1), has challenged the order dated 17.03.2023 (Annexure P-2) (in CS-1892-2022), passed by Ld. Civil Judge (Junior Division), Panipat, whereby, defence of defendant No.1, has been struck off, and he was precluded from filing written statement and reply to the stay application.

2. Learned counsel for the petitioner (defendant No.1) while referring to the zimni orders reproduced in the revision petition, submits that on 03.11.2022, suit filed by the plaintiff was registered and notice to the defendants was issued for 22.11.2022. Accordingly, on 22.11.2022, defendant No.1 appeared before the Court and time was granted for filing written statement and reply to the stay application. Service upon defendant No.2, was not complete, so fresh notice was issued. Thus, proceedings were adjourned to 08.02.2023.

3. On 08.02.2023, again service upon defendant No.2 was incomplete, and on request, time was granted to defendant No.1 to file written statement, and reply to the stay application. Proceedings were again

CR-6068-2023

- 2 -

adjourned for 17.03.2023. Thus, 17.03.2023, was the third appearance of defendant No.1, and even on the said date, he could not file written statement and reply to the stay application. Thereupon, impugned order of striking off the defense of defendant No.1, was passed by the Trial Court.

It is worth noticing that despite incomplete service of defendant No.2, again fresh notice was issued for 19.09.2023, subject to necessary compliance.

4. Therefore, learned counsel for the petitioner requests that if one opportunity is granted to the petitioner/defendant No.1, to file his written statement and reply to the stay application, subject to the payment of some costs, the requisite written statement and reply to the stay application shall be filed by the petitioner/defendant No.1 within the granted time, and that would be required by the Trial Court also, while looking at the pleadings/stand of the respective parties, for the purpose of framing of the issues.

5. Learned counsel for the petitioner/defendant No.1 also relies upon the order dated 20.05.2022, passed by the Coordinate Bench of this Court in CR-1660-2020, titled as, “**Paro and others vs. Mahindo**”, wherein, in the similar circumstances, to avoid miscarriage of justice, the order of striking off defence was set-aside, and opportunity of filing of written statement was granted. Relevant part of the order dated 20.05.2022, says as under:-

“ The provisions of Order 8 Rule 1 of the CPC no doubt are directory in nature, however, at the same time the Courts must exercise their discretion to condone the delay, if any, in filing the written statement after exercising due circumspection and in case there appears to be an attempt on the part of the defendant to engage in dilatory tactics, the Courts should nip the same unhesitatingly.

Adverting to the case in hand, the petitioners were granted

CR-6068-2023

- 3 -

four opportunities to file their written statement, however, they failed to do so.

Be that as it may, if the petitioners are not granted one more opportunity to file their written statement, they would suffer irreparable loss which in turn would result in miscarriage of justice. Therefore, for just and proper adjudication of the case, this Court deems it appropriate to grant one last effective opportunity to the petitioners to file their written statement.

In the wake of the above, without issuing notice to the respondent, to avoid any further delay as well as expenses which she shall have to incur to defend these proceedings, the impugned order dated 21.11.2019, is set aside. The instant revision petition is allowed in the following terms:-

- 1. The petitioners are granted one last effective opportunity to file their written statement.*
- 2. In the event of default by the petitioners, the case shall not be adjourned any further for filing of their written statement and consequently their defence shall be deemed to be struck off.*
- 3. This, however, shall be subject to payment of costs in the sum of Rs.5,000/- to be paid to the respondent which shall be a condition precedent.”*

6. Even this Court, in similar circumstances, has passed a judgment in **Gigraj @ Giga Ram Jain v. Ram Kumar and others, 2023(3) RCR(Civil) 698 : Law Finder Doc Id # 2265730**, whereby, subject to payment of some cost, one opportunity was granted to the defendant to file written statement.

7. I have heard learned counsel for the petitioner/defendant No.1, and perused the relevant material on record.

8. This Court does realize that there is no need to call upon respondent No.1/plaintiff for the issue to be decided. Rather, same would be sheer wastage of time, for no gain to any of the party to the *lis*.

9. For deciding the small issue raised in the present petition, to the mind of this Court, all the factual details are not required to be examined minutely. As per the view point of this Court, it is always helpful for the Court to find out the solution by deciding the controversy after inviting

CR-6068-2023

- 4 -

response from all the concerned parties. Court cannot function on the principle of technicalities or in a specified & mechanized manner. Therefore, it would always be fair to impart justice after giving reasonable opportunity to all the parties to plead their stand in writing in the form of plaint, written statement and replication. Particularly speaking, pleadings are required for the just and proper adjudication of the case in the form of litigation before the Court.

Once written statement of the defendant is available on record, it is always convenient for the Court also to decide the controversy before it, after acknowledging the stand of both the sides.

10. Moreover, it is also noticed that by granting permission to file written statement, there is no wastage of time because, proceeding in suit is still at the stage of service of notice upon defendant No.2.

11. Considering the circumstances in its totality, **I hereby deem it appropriate to set-aside the impugned order dated 17.03.2023 (P-2) to the extent of striking off the defence of defendant No.1 (petitioner herein)**, and consequently, grant one more effective opportunity to the petitioner/defendant No.1 for filing his written statement and reply to the stay application on or before 20.01.2024, and then to frame/re-frame the issues afresh, if so required.

11. Petition stands **disposed of** accordingly.

(SANJAY VASHISTH)
JUDGE

December 01, 2023

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*