

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CR-6102-2023(O&M)
Date of Decision: 12.10.2023

Gram Panchayat, Sabhapur

....Petitioner

Versus

Rattan Singh and another

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Ms. Jyoti Chahal, Advocate for
Mr. R.S. Mamli, Advocate
for the petitioner.

SANJAY VASHISTH, J.(Oral)

1. Present revision petition has been filed by the petitioner-defendant No.1, challenging the order dated 19.05.2023 (Annexure P-3) passed by learned Civil Judge (Junior Division), Jagadhri, whereby defence of defendants qua filing of written statement and reply to the stay application was struck off.

2. Learned counsel for the petitioner submits that it is mentioned in the order dated 19.05.2023 that defendant No.1 appeared for first time in the Court on 21.10.2020 and defendant No.2 appeared for the first time in the Court on 30.11.2022, but till today neither the written statement; nor reply to the stay application has been filed by

the defendants. Further mentions that even statutory period of 90 days for the purpose of filing of the written statement and reply has also elapsed. Defendants failed to give any plausible reason for not filing written statement or reply to the application within stipulated time, thus, on the basis of the pleadings available with the Court in the plaint filed by the plaintiff, materially only one issue has been framed, which is reproduced as under:

'1. Whether plaintiff is entitled to relief of possession and permanent injunction as prayed for ?OPP
2. Relief.'

3. Learned counsel for the petitioner submits that rather, learned trial Court ought to have noticed that the dispute raised in the suit is in regard to possession over the land which belongs to Gram Panchayat.

4. Learned counsel also submits that learned trial Court has not taken note of the factual situation of prevailing of pandemic COVID-19 in the year 2020-2021 till March, 2022 and has thus committed an error by striking off the defence of the defendants in the civil suit proceedings.

5. Learned counsel for the petitioner 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 defense 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 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. For deciding the small issue raised in the present petition, to the mind of this Court, all the details are not required to be examined minutely. As per the view point of this Court, it is always good for the Court to find out solution by deciding the controversy after inviting response from all the concerned parties. Court cannot function on the principle of technicalities or in a specified

mechanised 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 shape 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.

7. Considering the circumstances in its totality, **I hereby deem it appropriate to set-aside the impugned order dated 19.05.2023 to the extent of striking off the defense of defendant No.1**, and consequently grant one more effective opportunity to defendant No.1 (petitioner herein) for filing his written statement or reply. **However, said concession has been made available to the petitioner subject to payment of costs of Rs.10,000/- to the respondent No.1.**

8. Disposed of.

October 12, 2023

rashmi

Whether speaking/reasoned

Whether reportable?

**[SANJAY VASHISTH]
JUDGE**

yes/no

yes/no