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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on : 19.10.2023

Rajeev Kumar and another

. . . Petitioner(s)

Versus

State Bank of India and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. R.S. Dhaliwal, Advocate
for the petitioner(s).

Mr. Somesh Gupta, Advocate
for respondent No.1.

SANJAY VASHISTH, J. (Oral)

1. By way of present revision petition, petitioner No.1 – Rajeev Kumar (defendant No.3), has challenged the order dated 02.08.2023 (Annexure P-2), and petitioner No.2 – Parminder Singh (defendant No.5), has challenged the order dated 10.05.2023 (Annexure P-1), whereby, defence of the said defendants, has been struck off on account of not filing of written statements within the stipulated period of 90 days.

2. Learned counsel for the petitioners submits that mortgaged suit for recovery of Rs.16,27,707/-, has been filed by respondent No.1 – State Bank of India (sole plaintiff), which is pending before the Court of Ld. Additional Civil Judge (Sr. Divn.), Ferozepur. In the said suit, defendants No.3 & 5 (petitioners herein) had appeared before the Trial Court after coming to know of the proceedings before it.

3. Learned counsel further submits that in fact, it was submitted before the Trial Court that an application has been moved by the plaintiff

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before the Vigilance Bureau of Investigation, and Bank officials have informed the petitioners that the statements are being recorded by the Vigilance Bureau, and thereafter, Bank would be withdrawing the present suit, as the Vigilance Bureau is conducting their inquiry. Despite disclosing the fact before the Ld. Trial Court, same was not appreciated, and rather, the Ld. Trial Court closed the opportunity for the purpose of filing the written statement, at the instance of defendant No.3 vide impugned order dated 02.08.2023, and *qua* defendant No.5, vide impugned order dated 10.05.2023.

Further submits that the order of striking off the defence, was passed in the presence of both the parties. Thus, learned counsel for the petitioners/defendants No.3 & 5, submits that for the *bona fide* reason, written statement could not be filed within the stipulated time granted by the Court. He further informs the Court that the next date fixed before the Trial Court is 18.12.2023, and said suit is still at the initial stage i.e. at the stage of completion of pleadings. As of now, no material proceedings have been initiated, as issues are yet to be framed.

4. Therefore, learned counsel requests that if one opportunity is granted to the petitioners/defendants No.3 & 5, to file their respective written statements, subject to the payment of some costs also, the requisite written statements shall be filed by the petitioners/defendants No.3 & 5 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 petitioners/defendants No.3 & 5 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***”,

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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 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 (petitioner therein) to file written statement.

7. I have heard learned counsel for the petitioners/defendants No.3

& 5, and perused the relevant material on record.

8. This Court does realize that for deciding the petition, there is no need to call upon the respondent/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 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 & 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 defendants No.3 & 5 (petitioners herein), is available on record, it would be convenient for the Court also to decide the controversy involved.

10. Considering the circumstances in its totality, **I hereby deem it appropriate to set-aside the impugned orders dated 10.05.2023 (P-1) and 02.08.2023 (P-2) to the extent of striking off the defence of defendants No.3 & 5 (petitioners herein) respectively, and consequently, grant one more effective opportunity to the petitioners/defendants No.3 & 5 for filing their respective written statements on or before 18.12.2023, and then to frame/re-frame the issues afresh, if so required. However, it would be subject to the payment of Rs.10,000/- each, as costs, which would be**

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paid by the defendants No.3 & 5 (petitioners herein) to the plaintiff
(respondent herein) before the Trial Court.

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

(SANJAY VASHISTH)
JUDGE

October 19, 2023

J.Ram

Whether speaking/reasoned: ✓Yes/~~No~~

Whether Reportable: ✓Yes/~~No~~