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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-6162-2023 (O&M)
Date of Decision:- 19.10.2023

SANJEEV KUMAR

...Petitioner

Vs.

TARSEM LAL

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Gurcharan Dass, Advocate for the petitioner.

AMARJOT BHATTI, J. (Oral)

1. The petitioner – Sanjeev Kumar has filed civil revision petition under Article 227 of the Constitution of India for setting aside order dated 07.11.2022, Annexure P-1 and order dated 17.02.2023, Annexure P-2, passed by learned Civil Judge (Jr. Divn.), Ludhiana in Civil Suit No.4898 dated 02.07.2022 titled “Tarsem Lal Vs. Sanjeev Kumar” for grant of one opportunity to file written statement to the petitioner which could not be filed as the petitioner had suffered fracture of his right leg.

2. Learned counsel for the petitioner pointed out that Tarsem Lal had filed aforesaid civil suit seeking declaration that he is owner of a plot bearing Khasra number as detailed in the plaint. The copy of plaint is Annexure P-3. Notice was sent to the defendant for 20.07.2022 and his counsel had appeared on the next date and the case was adjourned for filing of his written statement for 01.08.2022. The written statement was not filed on the next five dates. The counsel for the petitioner had filed an

application regarding the medical condition of present petitioner/defendant and on this he was given another adjournment to file his written statement. On two dates, the file was not taken up as the Presiding Officer was on leave and ultimately vide impugned order dated 17.02.2023, Annexure P-2, his defence was struck off and the case was fixed for plaintiff's evidence.

3. The counsel for the petitioner has placed on record the medical prescription slips of Ashirwad Hospital, Model Town Extension, Ludhiana, Annexure P-4 to P-8. X-ray film is Annexure P-9. There was no intentional delay on the part of the present petitioner in filing the written statement but it was due to some unavoidable circumstances. It is prayed that he may be given one effective opportunity to file his written statement.

4. I have considered the arguments and have gone through the record carefully. All the zimni orders are reproduced in the petition and copies are also placed on record. The factual position is clear. No purpose would be served by issuing notice to the respondent/plaintiff as it will lead to further delay and litigation as well as extra litigation expenditure for the respondent/plaintiff. The copy of plaint is Annexure P-3 which clearly indicates that the plaintiff has filed suit for declaration claiming his ownership over the plot. He has also claimed possession thereof, along with charges for use and occupation of the premises, with the relief of permanent injunction. Material rights of the plaintiff as well as defendant are to be determined by the trial Court. It cannot be ignored that the present petitioner was given number of opportunities to file his written statement but he failed. The case remained pending for long duration of 7

months for this purpose. The counsel for the petitioner has also relied upon the medical prescription slips for the months of October, 2022, November, 2022, February, 2023 and October, 2023 which are Annexures P-4 to P-9 to show that the present petitioner suffered a fracture of his leg as a result of which he could not file his written statement on time. The nature of litigation cannot be ignored. It is in the interest of justice that both the parties are given opportunity to present their case for proper final adjudication of the litigation. The other party i.e. the respondent/plaintiff can be compensated by imposing costs. Therefore, a lenient view is taken and the present petitioner is given one opportunity to file his written statement on the next date i.e. 25.10.2023 subject to payment of costs of Rs.10,000/- to the respondent/plaintiff Tarsem Lal.

5. The revision petition is accordingly disposed of.

Pending application (s), if any, also stands disposed of.

19.10.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No