

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(257)

CR No. 7229 of 2019

Date of Decision : 01.05.2023

Kanwaljit Kaur

...Petitioner

Versus

Harmanjot Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Atam Prakash Setia, Advocate for the petitioner.

Harsimran Singh Sethi J. (Oral)

1. The present civil revision petition has been filed for setting-aside the order dated 20.01.2018 (Annexure P-5) by which, the defence of the petitioner-defendant was struck off.

2. Learned counsel for the petitioner submits that within a period of three months of the filing of the suit itself, the impugned order was passed which shows that there was no application of mind while striking off the defence of the petitioner-defendant.

3. Learned counsel for the petitioner submits that one more opportunity be granted to file the written statement, even if the said opportunity is to be granted by imposition of cost.

4. Notice of motion was issued but no one has put in appearance on behalf of the respondent-plaintiff despite service, which is clear from the order dated 02.03.2022 passed by the Co-ordinate Bench of this Court.

5. I have heard learned counsel for the petitioner and have gone

through the record with his able assistance.

6. The suit was filed by the respondent-plaintiff on 18.10.2017 along with the application under Order 39 Rule 1 and 2 CPC seeking mandatory injunction against the petitioner-defendant from interfering in his peaceful possession or dispossessioning him from the property in question without due process of law.

7. Vide order dated 20.01.2018 (Annexure P-5), the defence of the petitioner-defendant was struck off on the ground that no written statement has been filed within the statutory period. It may be noticed that the statutory period fixed is not mandatory but is directory keeping in view the fact that the present was not a case regarding any financial transaction or related to the commercial claims.

8. It is a settled principle of law that all the disputes between the parties will be decided on merits by giving due opportunity to defend as far as possible. In the facts and circumstances of the present case, the interest of justice will be served in case, one more opportunity is granted to the petitioner-defendant to file the written statement, especially, when the respondent-plaintiff has chosen not to defend the present claim.

9. It may be noticed that a Co-ordinate Bench of this Court vide order dated 16.12.2019 had requested the trial court to adjourn the proceedings beyond the date fixed before this Court, which interim order is continuing as of today, hence, the proceedings before the trial court are also not being conducted.

10. In the facts and circumstances of the present case, the present revision petition is allowed. The impugned order dated 20.01.2018

(Annexure P-5) is set-aside with liberty to the petitioner-defendant to file written statement within a period of one week of the next date of hearing before the trial Court. However, the said opportunity is being granted to the petitioner-defendant subject to payment of Rs. 10,000/- as cost to be paid to the respondent-plaintiff, for compensating him for the delay, which has occurred.

11. It may be noticed that in case, the opportunity to file written statement, as granted by this Court is not availed, no further opportunity will be granted to the petitioner-defendant.

12. Petition is allowed in above terms.

May 01, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No