

262

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

CR No. 7733 of 2019

Date of Decision:18.07.2023

Guddi

... Petitioner

Versus

Surinder Singh and Others.

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Sherry K. Singla, Advocate
for the petitioner

.....

SANJIV BERRY, J.

Present revision petition has been preferred under Article 227 of the Constitution of India, by the petitioner (defendant No.7 i.e. Guddi) against the impugned order dated 24.10.2019 (Annexure P-7), passed by Ld. Civil Judge (Jr. Div.), Talwandi Sabo, whereby, application under Order 8 Rule 1 CPC filed by the plaintiff-respondent No.1 for striking off the defence of the defendant-petitioner due to non-filing of the written statement has been allowed and the application filed by the defendant-petitioner for enlarging the time for filing the written statement has been dismissed.

2. Heard.

3. After hearing the submissions advanced by the learned counsel for the petitioner and perusing the impugned order, it is observed that for the

purpose of deciding the petition there is no necessity to issue notice to the respondents.

4. In nut-shell, the facts of the case are that the plaintiff-respondent No.1 had filed a suit for specific performance of agreement to sell dated 05.05.2017 with regard to the land measuring 75 kanal 14 marlas and paid ₹5,00,000/- to the defendants and it was agreed between them that the sale deed shall be executed on or before 15.06.2017. The plaintiff therein had also sought consequential relief for possession of the suit land besides seeking declaration to the effect that the sale deed dated 03.08.2017 regarding the land measuring 12 Kanals executed by defendant No.7 in favour of defendants No. 1 to 4 is illegal, null and void and liable to be set aside. In the alternative, the plaintiff sought the relief of recovery of the earnest money besides seeking the relief for permanent injunction restraining the defendants from further alienating the suit property.

5. Upon notice of the suit, the defendants appeared through counsels, infact defendants No.1 to 6 appearing on 31.08.2018 and defendant No.7 appearing on 14.02.2019, and the case was adjourned for filing of the written statements. In the meantime application moved on behalf of the defendants for supply of the documents on 20.05.2019 was disposed of on 26.09.2019. The plaintiff in the suit filed an application for striking of the defence of the defendants dated 23.05.2019, the reply there to was also filed and in the meanwhile application dated 26.09.2019 was filed on behalf of the defendants under Section 148 read with 151 CPC for enlarging the time for filing of the written statement. The learned Civil Judge vide the impugned order dated 24.10.2019 has dismissed the

application of the defendants and thereby striking of the defence of the defendants. Aggrieved by the same the present revision petition has been preferred.

6. It is submitted by learned counsel for the petitioner that the petitioner-defendant could not file the written statement within the stipulated time as they have moved the application for supply of documents and the said application was pending which was disposed of only on 26.09.2019. He submitted that the learned trial Court did not afford any caution in the form of imposition of costs or last opportunity and proceeded to pass the impugned order dated 24.10.2019 striking of the defence. He submits that the defendants petitioner undertake to file the written statement in case such permission is granted by this Court. He also submitted the provisions of Order 8 Rule 1 CPC is directory in nature and in the interest of justice one opportunity be afforded to the petitioner to file the written statements. He further submitted that no prejudice would be caused to the plaintiff-respondent No.1 by affording such opportunity because the suit is pending in the trial Court for 07.08.2023 for consideration on the application under Order 6 Rule 17 moved by the plaintiff and in any case the plaintiff can be compensated with costs.

7. In support of his submissions, the learned counsel for the petitioner has relied 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.”*

8. He also referred to the judgment in the case of ***Bharat Kalra Vs. Raj Kishan Chabra, 2022 SCC OnLine SC 613*** wherein it has been held that the provision of Order 8 Rule 1 of CPC is not mandatory relying upon the judgment of the Supreme Court in ***Kailash V. Nankhu & Ors. (2005) 4 SCC 480***.

9. Thus, keeping in view the facts and circumstances mentioned above and the fact that the case is pending before the learned trial Court for 07.08.2023 for consideration on the application under Order 6 Rule 17 moved by the plaintiff. Thus, in case the written statement by defendant No.7- petitioner is allowed to be taken on record by the learned trial Court, no prejudice in any manner is going to be caused to any party, especially when the case is pending in the trial Court for 07.08.2023, for the purpose of consideration on the application under Order 6 Rule 17 CPC moved by the plaintiff-respondent No.1. Infact, filing of written statement by the petitioner/defendant No.7 will help the learned trial Court to arrive at just decision in the matter and in allowing so, the plaintiff can well be compensated by payment of costs which will be in consonance with the judgments referred (supra) and in order to impart complete justice between the parties.

10. In view of above discussions and the above facts and

circumstances in its totality, this Court deem it appropriate to set-aside the impugned orders dated 24.10.2019 (Annexure P-7) to the extent of striking off the defence of defendants and consequently, the defendants are granted one more opportunity to file written statement, on or before the next date fixed before the trial Court i.e 07.08.2023, and then the trial Court may re-frame the issues afresh, if so required. However, it would be subject to payment of ₹7,000/- as costs to the plaintiff.

11. Petition stands disposed of accordingly.

(SANJIV BERRY)
JUDGE

18.07.2023
Gyan

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |