

116.

2023:PHHC:150245

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

CR-7116-2023

Date of decision: 24.11.2023

PANKAJ SINGH KALURA

.... Petitioner

Versus

JAGMOHAN SINGH

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Pulkit Sachdeva, Advocate, for the petitioner.

GURBIR SINGH, J. (Oral)

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 04.10.2023 (Annexure P-1) passed by learned Civil Judge (Senior Division), Chandigarh, whereby the defence of the petitioner-defendant has been struck off on account of non-filing of written statement.

2. The brief facts, as culled out from the petition, are that the respondent-plaintiff (hereinafter called, "plaintiff") has filed a suit for recovery against the petitioner-defendant (hereinafter called, "defendant") in the year 2022. But since defendant could not appear on 14.09.2022, he was proceeded against ex-parte and the case was fixed for ex-parte evidence of the plaintiff. In the meantime, the plaintiff also filed a police complaint against the defendant before Police Station Sector 39, Chandigarh, whereby the defendant was summoned. The plaintiff also disclosed about the pendency of civil suit before the police officials.

3. On 21.12.2022, the defendant moved an application under Order 9 Rule 7 read with Section 151 CPC for setting aside the ex-parte order dated 14.09.2022, which was allowed vide order dated 10.04.2023. Since the defendant was not having the copy of civil suit, he also moved an application seeking direction to the plaintiff to supply him the same. Said application was also allowed vide order dated 16.08.2023. Thereafter, the matter was fixed for filing written statement. However, vide order dated 04.10.2023, the trial Court struck off the defence of the defendant to file written statement by observing that despite availing numerous opportunities, he failed to file the same and moreover, the statutory period of 90 days has also been elapsed. It is the said order which has been challenged by way of present revision petition.

4. Learned counsel for the petitioner submits that the petitioner-defendant was not aware about the filing of the suit. He came to know only on 21.12.2022 from the police complaint in which he was summoned and then he moved the application for setting aside the ex-parte order and for supply of copy of civil suit. He has argued that the defendant had received the copy of civil suit along with other documents only on 16.08.2023 and the impugned order was passed on 04.10.2023. The trial Court has wrongly observed that the statutory period of 90 days for filing written statement has been elapsed.

5. Learned counsel for the petitioner submits that the petitioner-defendant would be satisfied if one opportunity is granted to him for filing written statement and he would not seek any other opportunity. The next date before the trial Court is 01.12.2023.

6. Keeping in view the fact that the procedure is handmaid to the administration of justice and it is meant for advancement of justice; the petitioner should not be non-suited merely on procedural technicalities.

7. If notice of this petition is given to the respondent, then it may linger on the case and may cause financial burden on him.

8. Although there is some inaction on the part of the petitioner, but keeping in view the fact that technicalities should not come in the path of justice and if one opportunity is granted to the petitioner to file written statement, no prejudice would be caused to the other side, which may be compensated with costs.

9. So, in the interest of justice, the impugned order dated 04.10.2023 (Annexure P-1) is set hereby set aside and present petition is disposed of with a direction to the trial Court to give one opportunity to the petitioner-defendant to file written statement but subject to payment of costs of Rs.10,000/- to the respondent -plaintiff. He shall file the written statement on the date fixed i.e. 01.12.2023. In case of default, this order shall automatically stand vacated.

10. If the respondent is not satisfied with this order, he can move an application for recalling of this order within 30 days.

(GURBIR SINGH)
JUDGE

November 24, 2023
sanjeev

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No