

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

127

CR-7365-2023 (O&M).

Date of Decision: 06.12.2023.

Darshna

....Petitioner.

Versus

Kamla

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Karan Singh, Advocate for petitioner.

Lalit Batra, J.(Oral)

CM-22403-CII-2023

Exemption application allowed, as prayed for.

Main Case

This civil revision petition under Article 227 of the Constitution of India read with Section 115 CPC has been filed by petitioner/defendant, impugning the legality of order dated 16.11.2023 (Annexure P-6), rendered by learned Civil Judge (Junior Division), Jind, in Civil Suit CIS No.CS519/2023 titled 'Kamla vs. Darshna', in terms of which, on account of non-filing of written statement and reply to stay application despite availing effective opportunities, defence of petitioner/defendant was struck off.

2. Learned counsel for petitioner *inter alia* contends that respondent/plaintiff filed civil suit for declaration and for permanent injunction. On receipt of notice of the suit, counsel for petitioner/defendant appeared before Trial Court on 09.08.2023 and sought time to file Power of Attorney, written statement and reply to application under Order XXXIX Rules 1 and 2 read

with Section 151 CPC and the matter was adjourned to 15.09.2023. On 15.09.2023, on the request of counsel for petitioner/ defendant, the case was adjourned to 19.10.2023. However, due to some unavoidable circumstances, petitioner/defendant could not appear in person before Trial Court on 19.10.2023 and 16.11.2023 though her counsel was present in the Court and sought time to file written statement and reply to injunction application. Learned Trial Court vide order dated 16.11.2023 struck off the defence of petitioner/defendant without affording any further opportunity to file written statement and reply to stay application. Petitioner/defendant could not file written statement and reply to stay application as she could not arrange the relevant documents.

Learned counsel for petitioner further contends that provisions of Order VIII Rule 1 CPC are only directory and not mandatory and to this effect, reliance has been placed upon decision of Hon'ble Supreme Court in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 (SC) 3353**, wherein it has been held as under:-

“22. xx xx xx xx In construing the provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order VIII, the court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order VIII Rule 1. There is no restriction in Order VIII Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to 'make such order in relation to the suit as it thinks fit'.

*Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. xx
xx xx xx”*

Learned counsel for petitioner further contends that if the petitioner/defendant is not allowed to defend her case, she will suffer irreparable loss and injury. Thus, one more effective opportunity may be given to petitioner/defendant to file written statement and reply to stay application so that suit may be disposed of effectively and properly.

3. I have heard learned counsel for petitioner and have also gone through the contents of petition especially the documents placed on the record.

4. Notice of instant petition is not required to be given to respondent as entire documents i.e. copies of miscellaneous orders passed by learned Trial Court are already on record. In order to avoid further delay in the litigation and unnecessary litigation expenditure, the service of notice to respondent is dispensed with.

5. In view of *ratio decidendi* in **Salem Advocate Bar Association, Tamil Nadu** case (supra) and further keeping in view basic principle of law that everyone has right of hearing and, thus, no one should be condemned unheard, in this scenario petitioner/defendant should not have been deprived of her legal right to defend her cause. Since written statement is a basic document to substantiate the cause of a particular litigating party, in the considered opinion of this Court, petitioner deserves to be permitted to file

written statement and reply to stay application for which, of course she can be burdened with costs. Resultantly, impugned order dated 16.11.2023 is set aside. However, it is made clear that learned Trial Court would grant only one effective opportunity to petitioner/defendant to file written statement and reply to stay application and the said opportunity would only be available to petitioner/defendant, subject to payment of costs of Rs.5000/- (Rupees Five Thousand only) by her with District Legal Services Authority, Jind.

In these terms, instant civil revision is allowed accordingly.

(LALIT BATRA)
JUDGE

06.12.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No