

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112 CR-7393-2023
Date of Decision: 08.12.2023.

Paramjit KaurPetitioner
Versus
Kuldeep SinghRespondent

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Ms. Kanwal S.Walia, Advocate for petitioner.

Lalit Batra, J.(Oral)

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 orders dated 19.05.2023 (Annexure P/1) and 12.10.2023 (Annexure P-7), rendered by learned Civil Judge (Junior Division), Kapurthala, in Civil Suit No.CS/468/2022 titled 'Kuldeep Singh vs. Paramjit Kaur', in terms of which, on account of non furnishing of duly sworn affidavit along with written statement despite availing effective opportunities, defence of petitioner/defendant was struck off and order dated 12.10.2023 (Annexure P/7), in terms of which application dated 19.05.2023 (Annexure P/6) for furnishing affidavit in support of written statement, was dismissed.

2. Learned counsel for petitioner *inter alia* contends that respondent/ plaintiff filed civil suit for permanent injunction. Notice of the civil suit was issued to defendant but on account of defendant being out of India, she was ordered to be summoned through substituted service. On receipt of notice of the suit, counsel for petitioner/defendant appeared before Trial Court on

03.11.2022. She further submits that though the petitioner/defendant had filed written statement to the civil suit on 25.01.2023 along with reply to application under Order XXXIX Rules 1 and 2 read with Section 151 CPC yet an affidavit in support thereof could not be filed at that point of time. Thereafter, the respondent/plaintiff had filed replication to the said written statement on 21.04.2023, copy of which is annexed herewith as Annexure P/4. On 19.05.2023, the defence of the petitioner/defendant was struck off for non-filing of duly sworn affidavit with the written statement. On the same day i.e. on 19.05.2023, an application (Annexure P/6) was moved by the petitioner/defendant to allow her to place on record her duly sworn affidavit in support of her written statement. It was specifically mentioned therein that the defendant was abroad and hence she was unable to furnish her duly sworn affidavit in support of her written statement dated 25.01.2023 and she was ready to furnish her duly sworn affidavit. A copy of affidavit prepared by the petitioner/defendant has been placed on record of this revision petition as Annexure P/6 (Colly). However, learned Civil Judge (Junior Division), Kapurthala, vide order dated 12.10.2023 (Annexure P/7) dismissed the application (Annexure P-6) of the petitioner on the ground that defence of petitioner/defendant had already been struck off, vide order dated 19.05.2023.

3. 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”

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

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

6. Notice of instant petition is not required to be given to respondent/plaintiff as entire documents 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.

7. 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 affidavit in support of the written statement. Resultantly, impugned order dated 19.05.2023 (Annexure P/1), whereby the defence of the petitioner/defendant was struck off and order dated 12.10.2023 (Annexure P/7), in terms of which application dated 19.05.2023 (Annexure P/6) for furnishing affidavit in support of written statement, was dismissed, are set aside. However, it is made clear that learned Trial Court would grant only one effective opportunity to petitioner/defendant to file affidavit in support of written statement.

8. In these terms, instant civil revision is allowed accordingly.

(LALIT BATRA)
JUDGE

08.12.2023
varinder prashad

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No