

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

115

CR-7404-2023
Date of Decision: 08.12.2023.

Manmeet Singh and othersPetitioners

Versus

Pankaj BhutaniRespondent

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Suneet Pal Singh Aulakh, Advocate for petitioners.

Lalit Batra, J.(Oral)

This civil revision petition under Article 227 of the Constitution of India has been filed by petitioners/defendants, impugning the legality of order dated 01.08.2023 (Annexure P-6), rendered by learned Civil Judge (Junior Division), Karnal, in Civil Suit No.CS/711/2023 titled 'Pankaj Bhutani vs. Mahesh Lakhani and others', in terms of which, on account of non-filing of written statement despite availing effective opportunities, defence of petitioners/defendants was struck off.

2. Learned counsel for petitioners *inter alia* contends that respondent/plaintiff filed civil suit for permanent injunction. On receipt of notice of the suit, counsel for petitioners/defendants appeared before Trial Court on 05.04.2023. He further submits that though written statement was

ready to be filed on 01.08.2023 but since the learned Trial Court was on leave in the second half of 01.08.2023, the same could not be filed. However, in the first half, learned Trial Court struck off the defence of the petitioners/defendants on the ground that no written statement was filed, despite the fact that it was ready with the petitioner. A copy of written statement dated 01.08.2023 so prepared, has been placed on record as Annexure P/9.

3. Learned counsel for petitioners 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 petitioners further contends that if the petitioners/defendants are not allowed to defend their case, they will suffer irreparable loss and injury. Thus, one more effective opportunity may be given to petitioners/defendants to file written statement so that suit may be disposed of effectively and properly.

5. I have heard learned counsel for petitioners 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 petitioners/defendants should not have been deprived of their legal right to defend their cause. Since written statement is a basic document to substantiate the cause of a particular litigating party, in the considered opinion of this Court, petitioners deserve to be permitted to file written statement for which, of course they can be burdened with costs. Moreover, the impugned order dated 01.08.2023 seems to be passed in haste as learned Trial Court has observed - **“More than one year has elapsed since the appearance made on behalf of defendants”** whereas the Civil Suit No.CS/711/2023 was instituted on 10.03.2023.

8. Resultantly, impugned order dated 01.08.2023 (Annexure P/6) is set aside. However, it is made clear that learned Trial Court would grant only one effective opportunity to petitioners/defendants to file written statement and the said opportunity would only be available to petitioners/defendants, subject to payment of costs of Rs.10,000/- (Rupees Ten Thousand only) by them with District Legal Services Authority, Karnal.

9. 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