

2024:PHHC:046927
**143 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-48-2024 (O&M)
Date of decision: 04.04.2024

Gurpreet Kaur

...Petitioner

Versus

Amar Nath and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Sandeep Arora, Advocate for the petitioner

Mr.Namit Gautam, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

1. The petitioner herein the defendant no.2 in a plaintiff's suit which is pending. Originally, the plaintiff filed a suit for the grant of decree of permanent injunction restraining the defendants from alienating or dispossessing the plaintiff from plot measuring 1214 square yards. During the pendency of the suit, the plaintiff's prayer for permission to amend the plaint was allowed and he was permitted to claim the decree of declaration to the effect that he is owner of the said property and the sale deeds executed by defendant no.1, in favour of defendant no.2 on 28.01.2010 and dated 18.07.2012 are thus, not binding on him. The amendment was allowed on 30.1.2018 whereas the amended plaint was filed on 07.12.2018. Thereafter, the defendants filed an application on 18.01.2019 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). The plaintiff also filed an application on 24.01.2019 for consolidation of the cases, which were pending. On 18.05.2022, the plaintiff's application for

consolidation of suits was allowed. The application filed under Order VII Rule 11 CPC by the defendants was dismissed on 20.08.2022. Amidst this confusion, the defendant no.2, who is the vendee pursuant to two sale deeds referred to above, failed to file reply to the amended plaint. This fact came to his notice when the plaintiff has led a part of his evidence. Immediately, defendant no.2 filed an application for permission to file the written statement to the amended plaint, which has been dismissed by the court on the ground that under Order VIII Rule 1 CPC the period for filing the written statement is 90 days. The correctness of the aforesaid order is challenged before this Court. The defendant no.2, while filing the application, has already placed on record the written statement to the amended plaint, which is available on record. Though there is delay on the part of the petitioner (defendant no.2) however, the provisions of Order VIII Rule 1 CPC are not mandatory. It is evident that two applications; one filed under Order VII Rule 1 CPC and another filed for the consolidation of the suits remained pending for 3 years. This appears to be a case of a bonafide mistake. The petitioner herein is a purchaser of the property by virtue of the two registered sale deeds. The suit originally filed by the plaintiff has been permitted to be subsequently amended. In these circumstances, defendant no.2, being the vendee, would suffer prejudice if he is not permitted to file the written statement to the amended plaint. While filing the original written statement to the suit for grant of permanent injunction the petitioner may not have taken all the defences.

2. It has been stated that the written statement is already a part of the record. Hence, the delay in filing the written statement is condoned, subject to payme nt of Rs.1,000/- as costs, which shall be paid to the plaintiff.
3. With these observations, the revision petition is allowed.
4. All the pending miscellaneous applications, if any, are also disposed of.

04.04.2024
rekha
Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No

(ANIL KSHETARPAL)
JUDGE