

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-58-2024 (O&M)
Decided on 24.01.2024

Tanapal ...Petitioner

Versus

Murugeshwari ...Respondent

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Ms.Arshdeep Kaur, Advocate
for the petitioner.

RITU TAGORE, J.(Oral)

1. The challenge in this revision is directed against the order dated 23.10.2023 (Annexure P-2), wherein learned lower Court struck off the defence of the petitioner (defendant before the learned lower Court) in a Civil Suit No.CS/CJ/1235/2020 captioned as Murugeshwari Vs. Tanapal. A prayer is made to permit him to file his pleadings in the afore-captioned Civil Suit by setting aside the impugned order.
2. Considering the limited prayer made in this revision, notice to respondent is dispensed with.
3. Learned counsel for the petitioner submits that respondent (plaintiff before the trial Court) filed a civil suit for mandatory injunction, seeking directions for the petitioner (defendant) to hand over the vacant possession of entire ground floor of the tenantment/house No.32(First Floor), Bapu Dham Colony, Sector 26, Chandigarh to her, with further prayer for recovery of Rs.28,000/- as mesne profits for his illegal use and occupation of the house in question at the rate of Rs.3500/- per month from 21.01.2020 to 21.08.2020 alongwith future mesne profits, through several

averments, detailed in the petition.

4. It is stated that respondent failed to provide the petitioner with a copy of plaint and in absence of the same, petitioner could not prepare his written statement within the prescribed period. Eventually, on 22.05.2023 copy of plaint was supplied to the counsel of petitioner. However, learned counsel for the petitioner, fairly conceded that on few scheduled hearing dates before the learned lower Court, adjournment was sought by the petitioner to file written statement. Submitting further learned counsel states on 23.10.2023, although the written statement was ready, it could not be submitted in the case as counsel for the petitioner was suffering from tooth ache and other counsel Sh.Vikas Kumar Dhaliwal, Advocate, who was requested to submit the written statement inadvertently could not appear before the learned lower Court, nor could inform the counsel for the petitioner due to some urgency in his family. The affidavit of Sh.Vikas Kumar Dhariwal (Annexure P-15) was referred to along with the receipt of payment of costs paid by the petitioner to counsel for the respondent (plaintiff). The learned counsel submits that petitioner has been prevented from filing his response in the case, causing serious prejudice to him. A prayer is made to set aside the order.

5. I have heard learned counsel for the petitioner and gone through the paper-book.

6. The perusal of paper book would reveal that petitioner took several opportunities to file the written statement. The Zimni orders placed on record (Annexure P-4 to P-10) do not indicate that petitioner had ever raised the plea before the learned lower Court regarding non-supplying of copy of the plaint to him. Instead, the orders revealed that petitioner's conduct has been negligent. The impugned order (Annexure P-2) indicates

that petitioner availed as many as 8 opportunities, yet failed to present his written statement, leading to the striking off his defence.

7. A careful reading of the language of Order 8 Rule 1 reveals that it imposes an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him/her or within the extended time falling within 90 days. The provision does not deal with the power of the Court and also does not explicitly take away or restrict the Court's authority to accept a written statement filed beyond the time as provided for. Further, nature of provision contained in Order 8 Rule 1 is procedural. It is not a part of the substantive law. However, the object behind amending the Order 8 Rule 1 in its current form is to expedite hearing rather than hinder or scuttle the same. The process of justice may be accelerated and hastened, but the fundamental fairness, which is a basic element of justice, cannot be permitted to be compromised.

8. It is trite that all rules of procedure are the handmaid of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. In ***Bharat Kalra Vs. Raj Kishan Chabra, 2022 (3) Apex Court Judgements (SC) 598*** Hon'ble Supreme Court observed as under:-

“Admittedly, the suit for injunction filed by the plaintiff is not the one which is governed by the Commercial Court Acts, 2015. Therefore, the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory in view of the judgment of this Court reported as ‘Kailashv v. Nankhu and others’, (2005) 4 SCC 480. In view of aforesaid judgment, we find that the delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing of the written statement is unreasonable.

Consequently, we allow the present appeal. The order passed by the High Court is set aside. The written statement already filed is taken on record.”

9. Although, I find that the petitioner has been negligent in not prosecuting the litigation with due diligence but still it could not be suggested that delay has been caused by the petitioner for any *mala fide* reasons. It is well established that the Court should adopt a liberal approach and rights of the parties should be adjudicated on the merits of the controversy rather thwarting the same on rigid technicalities. Furthermore, the counsel on behalf of the petitioner undertakes to file the written statement in one opportunity. The delay can always be rectified or atoned by imposing costs.

10. In circumstances to do complete justice between the parties, I believe that one opportunity be granted to the petitioner to file their written statement before the learned lower Court enabling him to put forth his stand before the Court to the assertions and allegations raised by the respondent (plaintiff) against him. Accordingly, impugned order dated 23.10.2023 (Annexure P-2) is set aside, subject to Rs.8000/- as cost payable by the petitioner (revisionist) to respondent (plaintiff).

11. Petitioner is directed to appear before learned lower Court on the due date of hearing as fixed by the Court and make the payment of costs and file their written statement on the date fixed or within 20 days thereafter.

12. Accordingly, revision petition is allowed in above terms.

13. Pending applications, if any, also stands disposed of accordingly.

24.01.2024
Rimpal

(RITU TAGORE)
JUDGE