

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-595-2024 (O&M)
Date of decision: 21.03.2024

Narinder Kaur

...Petitioner

Versus

Harpreet Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Prince Sharma, Advocate for the petitioner.

VIKAS SURI, J.

1. Petitioner Narinder Kaur, by way of the present petition under Article 227 of the Constitution of India has challenged the order dated 28.11.2023 (Annexure P-3), passed by learned Civil Judge (Sr. Divn.) Tarn Taran, whereby the defence of the defendant-petitioner was ordered to be struck off.

2. The brief facts relevant for adjudication of the present revision petition are that the plaintiff-respondents filed a suit for declaration to the effect that the plaintiffs are owners of 3/4th share out of 73/2986 share left by Sh. Amritpal Singh son of Kabal Singh out of the land described in the head note, situated at Village Manochahal, Tehsil and District Tarn Taran and for joint possession and consequential relief restraining the defendant from alienating the share of the plaintiff in the suit land.

3. Notice of the suit was issued to the petitioner-defendant,

pursuant to which, she put in appearance through counsel on 21.09.2023 and the case was adjourned to 16.10.2023 for filing written statement and for reply to the stay application on behalf of the petitioner-defendant. Thereafter, the case was adjourned to 07.11.2023 and 28.11.2023 for the said purpose. Then on 28.11.2023, the trial Court after recording that period of 90 days has already elapsed since the petitioner-defendant appeared through counsel, ordered the defence of the defendant to be struck off. The case was adjourned to 09.01.2024 for the evidence of the plaintiffs. The case was, thereafter, adjourned to 09.02.2024 and is now pending for 09.04.2024 for leading entire evidence of the plaintiffs. However, till date, no plaintiff witness has been examined.

4. Aggrieved by the aforesaid order dated 28.11.2023, the present revision petition has been filed by the petitioner-defendant before this Court.

5. Learned counsel for the petitioner has contended that the petitioner is 76 years old lady and the respondent-plaintiffs are her daughter in-law and grand children, respectively. The deceased Amritpal Singh was the son of the petitioner and after his demise, the respondents have already got their share out of the property after having effected a settlement and compromise, on the basis of which, mutation has already been sanctioned in favour of all the right holders and legal heirs of deceased Amritpal Singh. After receiving summons from the Court at Tarn Taran, the petitioner put in appearance through counsel and due to her mature age and ill health, she could not appear in Court for

attestation of the affidavit in support of the written statement and as such, the same could not be filed within 90 days. The petitioner has got the written statement/affidavit attested on 09.01.2024 (Annexure P-4) but the same was not taken on record by the Court in view of the impugned order having been passed on 28.11.2023. He has further argued that if the impugned order dated 28.11.2023 is not set aside and opportunity is not granted to the petitioner-defendant to file written statement, in that eventuality, the petitioner shall suffer irreparable loss and injury and there would not be any further occasion to plead the truth before the Court. Hence, he has prayed that the impugned order may be set aside.

6. I have heard learned counsel for the petitioner and have gone through the material available on record with his able assistance.

7. From the record of this case, it emanates that the petitioner-defendant has not filed the written statement and reply to the stay application within the period of 90 days, since the time she put in appearance through counsel on 21.09.2023. It is also not disputed that three opportunities were afforded to her for the said purpose. It is in these circumstances, the defence of the petitioner-defendant was ordered to be struck off vide order dated 28.11.2023. Apparently, there is no infirmity in the impugned order, yet, it will be appropriate and in the interest of justice, if one effective opportunity is afforded to the petitioner-defendant for filing written statement and reply to the stay application, because if she is not allowed to defend the suit, it will adversely affect her case.

8. There is no dispute in the proposition that the provisions of Order 8 Rule 1 CPC ordinarily ought to be adhered to but the trial Court could have permitted filing of the written statement and reply to the stay application, keeping in view the factual aspects noticed above, subject to compensating the plaintiffs with costs. Even otherwise, the aforesaid provisions have been held to be directory in nature by the Apex Court in ***Salem Bar Association vs. Union of India, (2005) 6 SCC 344***. It is well settled that the Court should not be too harsh to strike off the defence of the defendant at very early stage. In the present case, the matter is at the initial stage and the petitioner has also not examined any witness so far. The rules of procedure are handmaid of justice and cannot be allowed to defeat substantial justice between the parties. The object of procedural law is to advance the cause of justice. If the petitioner-defendant's defence is struck off and she is not permitted to file written statement and reply to the stay application, then her case is likely to be seriously prejudiced. The trial is at the initial stage, hence, it would be appropriate to grant one opportunity to the petitioner to file written statement and reply to the stay application and thereafter, to contest the suit accordingly, however, subject to payment of costs.

9. Given the nature of order being passed, no useful purpose is likely to be served by issuing notice of this petition to the respondents as it will result in unnecessary delay and the said order would not prejudice any party.

10. Considering all these aspects, the present revision petition is allowed and the impugned order dated 28.11.2023 is set aside, subject to

payment of Rs.5000/- as costs to be paid to the plaintiffs. The trial Court is directed to grant one effective opportunity to the petitioner-defendant to file written statement and reply to the stay application, subject to payment of aforesaid costs to the respondent-plaintiffs.

- 11. The revision petition is allowed in the aforesaid terms.
- 12. All pending applications, if any, also stand disposed of.

March 21, 2023
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No