

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-639-2024 (O&M)
Decided on 05.02.2024

Balbir Singh @ Balvir Singh and Ors.

...Petitioners

Vs.

Renu Chopra and Another

...Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Vishal Sharma (Vasudeva), Advocate
for the petitioner.

RITU TAGORE, J.(Oral)

1. The revision is directed against the order dated 19.12.2023, passed by learned Additional Civil Judge (Senior Division) Garshankar, which struck off the defence of the petitioners/defendants in a Civil Suit No.274 of 2023 titled Renu Chopra and Another vs. Balbir Singh and Ors. A prayer has been made to permit them to file their pleadings in the afore-captioned Civil Suit by setting aside the impugned order.
2. Considering the limited prayer made in this revision, notice to respondents is dispensed with.
3. Learned counsel for the petitioners/defendants submits that respondents/plaintiffs filed a suit for possession (Annexure P-1) with respect to the suit land as detailed and described in the head-note of the plaint and the site plan attached thereto, with further relief of permanent injunction restraining the respondents/defendants / their agents etc. from dispossessing the respondents/plaintiffs from the suit land or changing its nature by raising

construction or fencing, or digging or alienating any part of the same to any third person.

4. The learned counsel for the petitioners submits that they appeared in the aforesaid suit through their counsel on 10.07.2023 and case was adjourned to 16.08.2023 for filing their written statement. The learned counsel contends that the petitioners remained in a bona fide belief that their case was being properly conducted by their counsel. However, due to the election for the post of President for the Bar Association, the concerned counsel failed to pay due attention to the progress of the case and to file a written statement within the prescribed period, resulting in their defence being struck off.

5. Learned counsel submits that case is at the initial stage and petitioners be allowed to present their pleadings. It is stated that party /parties to the litigation should be permitted to contest their matter on merits rather than to scuttle their rights on technical grounds. The learned counsel submits that if the petitioners are not given a chance to file their response in the case, it would cause serious prejudice to them. The learned counsel for the petitioners undertakes to file their written statement, if granted one opportunity. A prayer is made to set aside the order.

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

7. The perusal of the paper-books would reveal that respondents/plaintiffs filed a suit for possession and permanent injunction against the petitioners/defendants regarding the suit property described in the head of the plaint (Annexure P-1) and the attached site plan, on the grounds inter alia that the land of the petitioners/defendants adjoins to the suit property of the respondents/plaintiffs on the eastern side. In December,

2015, respondent/plaintiffs found that petitioners/ defendants had encroached upon a part of the suit land as detailed and marked with letters ABCD in the site plan, illegally. The land was also demarcated from the revenue Department on 23.02.2016 and found the encroachment as detailed. It is asserted that despite repeated requested to the defendants/ petitioners to handover the land, but they refused, that necessitated to file the suit.

8. The perusal of paper book would reveal that petitioners took several opportunities to file written statement, eventually their defence was struck off vide impugned order on their failure to file the same . The issues were framed and case was posted for 5.2.2024 for evidence of respondents/plaintiffs.

9. 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.

10. It is trite that all rules of procedure are the handmaid of justice. In an adversarial system, no party should ordinary 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.”

11. While the petitioners have alledged negligence on the part of their counsel in pursing their case, yet a litigant is also duty bound to conduct his case diligently. Although, I find that the petitioners have been negligent in not prosecuting the litigation with due diligence, but still it can not be suggested that the delay has been caused by the petitioners for any *mala fide* reasons.

12. 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 petitioners undertakes to file the written statement in one opportunity. The delay can always be rectified or atoned by imposing costs.

13. In circumstances to do complete justice between the parties, I believe that one opportunity be granted to the petitioners to file their written statement before the learned lower Court enabling them to put forth their

stand before the Court to the assertions and allegations raised by the respondents/plaintiffs against them. Accordingly, impugned order dated 19.12.2023 is set aside, subject to ₹15,000/- as cost payable by the petitioners (revisionists) to respondents (plaintiffs).

14. The counsel for the petitioners submits that the case is scheduled for hearing for today. In view thereof petitioners are directed to appear before learned lower Court within 10 days from today and make the payment of costs and file their written statement.

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

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

05.02.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No