

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

137

CR-682-2024 (O&M)
Decided on: 03.04.2024

Rajender and others

...Petitioners

Versus

Shri Ram and another

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Bharat Bhushan Sharma, Advocate
for the petitioners.

RITU TAGORE, J.
CM-4708-CII-2024

This application is for placing on record *zimni* orders
(Annexures P-14 to P-24).

Application is allowed as prayed for.

Annexures P-14 to P-24 are taken on record, subject to just
exceptions. It is submitted by learned counsel that case before learned trial
Court is now fixed for 20.07.2024.

CR-682-2024

1. This revision is for setting aside order dated 16.11.2023
(Annexure P-6) passed by learned Additional Civil Judge (Senior Division),
Hodal, District Palwal, wherein learned trial Court struck off the defence of
the petitioners (defendants before the learned trial Court) in a Civil Suit
bearing No.211-2021 captioned as ‘Shri Ram and others Vs. Mohan and
others’, with further prayer to allow and grant one opportunity to the
petitioners to file written statement in the aforementioned petition.

2. Considering the limited prayer made in this revision, notice to respondents is dispensed with at this stage.

3. Learned counsel for the petitioners submits that respondent No.1 (plaintiff before trial Court) instituted a suit for permanent injunction against the present petitioners and proforma respondent before the Court of learned Additional Civil Judge (Senior Division), Hodal, District Palwal (Annexure P-1). It is stated that upon receiving the notice, the petitioners appeared in the aforementioned suit, but due to imposition of lockdown and restrictive working in the Courts, the aforesaid case was adjourned from time to time, as evident from the various *zimini* orders (Annexures P-3 to P-5).

4. It is further stated by the counsel for the petitioners that on 10.03.2023 the case was fixed for filing written statement on behalf of the petitioners, however, their counsel sought adjournment for filing the written statement which was accordingly accorded. Thereafter, on subsequent dates i.e., 14.07.2023 and 16.11.2023, on request of the petitioners, the case was adjourned for filing their written statement and eventually on account of non-filing of written statement within the extended mandatory period of 90 days the learned Court debarred the petitioners from filing the written statement on 16.11.2023. Consequently, petitioners' defence was struck off vide the impugned order.

5. The learned counsel contended that the aforementioned suit has been filed against eight defendants and some time was consumed for collecting of all the relevant and important documents from all the defendants, thereby, same could not be supplied to their counsel in time. As such, written statement could not be filed on due date of hearing. It is also stated that on account of the aforesaid unavoidable circumstances and

communication gap between the petitioners and their counsel, they failed to sign and verify the written statement within the stipulated time. Learned counsel further contends that due to the reason stated above, it is explicit that petitioners have not willfully abstained from filing their written statement. It is urged that if the petitioners are not permitted to file their written statement, they may lose their valid right of defence against the respondent No.1. This order has harshly affected the petitioners who have been prevented from filing their response in the case, causing serious prejudice to their rights in the suit. The learned counsel urges that the petitioners be given one opportunity to tender their written statement. Stating all the above averments, prayer is made to allow the petition.

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

7. The perusal of the paper book and the documents placed on record, it is evident that respondent No.1 instituted a civil suit for permanent injunction against the petitioners. Various *zimini* orders placed on record reveal that learned trial Court adjourned the case for numerous dates awaiting the receipt of case file, which was received by the learned trial Court on 20.01.2023. Subsequent *zimini* orders further reveal that petitioners were afforded the opportunities to file their written statement but they failed to file the same within the statutory period of 90 days. Consequently, their defence was struck off vide the impugned order dated 16.11.2023 (Annexure P-23).

8. A careful reading of the language of Order 8 Rule 1, CPC 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, CPC is procedural. It is not a part of the substantive law. However, the object behind amending the Order 8 Rule 1, CPC 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.

9. 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 the Supreme Court observed as under:-

“3. 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 ‘Kailash v. Nankhu and others’, (2005) 4 SCC 480.

4. 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.

5. 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.’’

10. Although, I find that the petitioners have been somewhat negligent in not prosecuting the litigation with due diligence but still, it cannot be suggested that delay has been caused by the petitioners for any malevolent reasons. It is well established that the learned 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. Keeping that in view, it is also an established practice of law that the delay can always be rectified or atoned by imposing costs.

11. As such, in circumstances to do complete justice between the parties, I believe that one effective opportunity be granted to the petitioners to file their written statement before the learned trial Court enabling them to put forth their stand before the learned Court to the assertions and allegations raised by the respondent No.1 (plaintiff) against them. Accordingly, impugned order dated 16.11.2023 (Annexure P-6) is set aside, subject to payment of Rs.15,000/- as costs payable by the petitioners to respondent No.1 (plaintiff).

12. Petitioners are directed to appear before learned trial Court on the due date of hearing as fixed by the learned trial Court and make the payment of costs and file their written statement on the date fixed.

13. It is made clear that in case of default, this order shall automatically stand vacated.

14. Respondent No.1 if not satisfied with this order, may move an application for recalling of this order within 30 days.

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

(RITU TAGORE)
JUDGE

03.04.2024
Rimpal

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