

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

136

CR-681-2024 (O&M)
Decided on: 03.04.2024

Amratpal Singh

...Petitioner

Versus

Gurpreet Singh

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

RITU TAGORE, J.

1. Learned counsel for the petitioner has placed on record copies of *zimini* orders passed by learned trial Court, same are taken on record, subject to just exceptions. It is submitted by learned counsel that the case before learned trial Court is now fixed for 19.04.2024 for plaintiff's evidence.
2. Challenge in the present revision is to the order dated 01.07.2023 (Annexure P-5) passed by Additional Civil Judge (Senior Division) Kapurthala in a Civil Suit No.626 of 2022 titled as 'Gurpreet Singh Vs. Amratpal Singh', whereby the evidence of the petitioner (defendant before the learned trial Court), has been closed by Court order.
3. Considering the limited prayer made in this revision, notice to respondent is dispensed with at this stage.

4. Learned counsel submits that the respondent (plaintiff before the trial Court) instituted a civil suit for possession by way of specific performance of agreement to sell dated 11.08.2020 in respect of land measuring 2 kanals 0 marla as detailed in the head note of the plaint (Annexure P-1) with consequential relief of permanent injunction against the petitioner on various averments taken in the plaint.

5. It is stated that upon receiving the notice of the case, petitioner appeared in the aforementioned suit through his counsel and thereafter moved an application (Annexure P-2) for production of documents to enable him to file his written statement. Thereupon documents were supplied to the petitioner on 09.03.2023 and the case was posted for filing of written statement by the petitioner. It is stated that petitioner, being an agriculturist, remained occupied with harvesting season and consequently could not file his written statement. As a result, the case was adjourned for filing the written statement for 26.04.2023, 22.05.2023 and on 01.07.2023 his defence was struck off vide impugned order (Annexure P-5). Learned counsel submits that the petitioner also moved an application (Annexure P-6) for recalling the order 01.07.2023 and sought permission to tender his written statement (Annexure P-7), but his request was not accepted on the plea of non-maintainability of the application, and it was returned.

6. While referring to various *zimini* orders, learned counsel contends that due to the reasons explained above it is explicit that petitioner has not willfully abstained from filing his written statement. It is urged by the learned counsel that the valuable right of the petitioner has been foreclosed by the learned trial Court, preventing him from defending his case. This order has harshly affected the petitioner, who has been unable to file a response, causing serious prejudice to his rights in the suit. The learned

counsel urges to give the petitioner one opportunity to tender his written statement and requests to allow the petition.

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

8. After perusing the paper book and the documents placed on record, it is evident that respondent filed a civil suit for possession by way of specific performance against the petitioner. Various *zimni* orders on record also indicate that the petitioner filed an application (Annexure P-2), requesting the respondent to provide a copy of an agreement to sell, and on 09.03.2023, copies of documents were supplied to the petitioner. Subsequent *zimni* orders also reveal that learned trial Court afforded four opportunities to the petitioner to present his written statement, but petitioner failed to submit the same, resulting in striking off the defence of the petitioner vide the impugned order. Furthermore, an application (Annexure P-6) indicate that the petitioner made a request before the learned trial Court for recalling of the order dated 01.07.2023, and requested to allow him to place on record his written statement (Annexure P-7). However, according to the averment of the petitioner, the learned trial Court did not entertain the application, deeming it not maintainable, and returned it.

9. 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.

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 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.’’

11. Although the facts of the case suggest that petitioner has been somewhat negligent in not prosecuting the litigation with due diligence, but still, it cannot be suggested that delay has been caused by the petitioner for any malevolent 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. Keeping that in view, it is also an

establish practice of law that delay can always be rectified or atoned by imposing costs.

12. In circumstances to do complete justice between the parties, I believe that one effective opportunity be granted to the petitioner to file his written statement before the learned trial 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 01.07.2023 (Annexure P-5) is set aside, subject to payment of Rs.20,000/- as costs by the petitioner to respondent (plaintiff).

13. Petitioner is directed to appear before the learned trial Court on the due date of hearing as fixed by the Court and tender the costs and file his written statement.

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

15. Respondent if not satisfied with this order, may move an application for recalling of this order within 30 days.

16. 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