

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-680-2024 (O&M)
Date of Decision:-13.02.2024

Randeep Mann

... Petitioner

Versus

Saravdeep Mann

... Respondent

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

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Present :- Mr. Parminder Singh, Advocate
for the petitioner.

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RITU TAGORE, J.(Oral)

1. This revision petition is directed against the order dated 22.08.2023 (Annexure P-3) passed by learned Civil Judge (Junior Division), Karnal, whereby the petitioner's right to file written statement has been closed in a civil suit No.CS-1253-2023 titled as Saravdeep Mann vs. Randeep Mann.

2. Learned counsel for the petitioner submits that respondent filed a suit for declaration, joint possession and consequential relief for permanent injunction (Annexure P-1). The petitioner-defendant caused his appearance in the said suit, and same was posted for filing written statement. The counsel submits that the petitioner could not file written statement within the time granted to him due to communication gap with his counsel as the petitioner lives outside. The learned counsel states that order of closure of his right to file written statement is very harsh upon the petitioner as he has been deprived to contest his claim on merits. The learned counsel states that

one opportunity be given and the petitioner shall file his written statement.

3. Keeping in view the limited prayer made in the present revision, notice to the respondent has been dispensed with.

4. Perusal of copy of the plaint (Annexure P-2) shows that the respondent has filed a civil suit for declaration and joint possession with consequential relief against the petitioner. Copy of zimini orders placed on record further shows that the suit was filed on 02.05.2023. The petitioner caused his appearance on 22.05.2023 and he was asked to file his written statement and reply to the interim application for 13.07.2023 but he did not file the same, and the case was again adjourned to 22.08.2023 for filing his written statement and reply. On 22.08.2023, again the petitioner did not file the reply and the learned trial Court by observing that despite availing several opportunities, the petitioner failed to file the written statement within statutory period of 90 days as provided under Order 8 Rule 1 CPC and closed his right to file his written statement in the case.

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

6. 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.

7. Although zimini orders placed on record, reflect that petitioner has been negligent in pursuing his case but still it could not be suggested that delay has been caused by the petitioner for any *mala fide* reasons. If his defence is struck off and he is not permitted to file the written statement, then his case is likely to be seriously prejudiced.

8. 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. It is settled that procedural law is hand maid to sub-serve the purpose of disbursal of substantial justice. 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.

9. 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 22.08.2023 (Annexure P-3) is set aside, subject to Rs.10,000/- as cost payable by the petitioner (revisionist) to respondent (plaintiff).

10. Petitioner is directed to appear before learned lower Court and make the payment of costs and file the written statement within fifteen days from the date fixed by the Court.
11. Accordingly, revision petition is allowed in above terms.
12. Pending applications, if any, also stands disposed of accordingly.

13.02.2024
Rimpal/Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No