

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

125

CR-785-2024 (O&M)
Decided on: 19.03.2024

Jitender

...Petitioner

Versus

Veena and another

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Sandeep Singh, Advocate
for the petitioner.

Mr. Anil Aggarwal, Advocate
for the respondents.

RITU TAGORE, J.

1. Mr. Anil Aggarwal, Advocate appears on behalf of respondents and files Power of attorney, which is taken on record, subject to just exceptions.
2. This revision is for setting aside order dated 20.11.2023 passed by learned Civil Judge (Junior Division), Jagadhri wherein learned Court struck off the defence of the petitioner (defendant before the learned trial Court) in a Civil Suit No.78-2022 captioned as ‘Veena and another Vs. Jitender’, with further prayer to allow and grant one opportunity to the petitioner to file written statement in the afore-captioned Civil Suit.
3. Learned counsel for the petitioner submits that with passing of the impugned order, he has been prevented from filing his written statement in a suit for unliquidated amount of compensation on account of damages

filed by the respondents against him. The learned counsel states that one opportunity be given to the petitioner to file his written statement, failing which he shall suffer irreparable loss.

4. Contra, learned counsel for the respondents contends that petitioner failed to file written statement within the statutory period of 90 days with no reasonable explanation. It is stated that no ground is made out to accede to the prayer of the petitioner.

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

6. Perusal of the paper book shows that respondents have filed a suit for unliquidated amount of compensation on account of damages for causing harassment and mental agony to them on various pleas taken in the plaint. The zimni orders (Annexure P-2 to P-4) indicate that the petitioner failed to file written statement despite availing number of opportunities within the statutory period of 90 days.

7. Although, I find that the petitioner has been negligent in not prosecuting the litigation with due diligence but still it could not be suggested that delay has been caused by the petitioner for any *mala fide* 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.

8. A careful reading of the language of Order 8 Rule 1 of 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 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 of CPC is procedural. It is not a part of the substantive law. However, the object behind amending the Order 8 Rule 1 of 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 ordinarily be denied the opportunity of participating in the process of justice dispensation. Furthermore, the counsel on behalf of the petitioner undertakes to present his written statement in one opportunity. The delay can always be atoned by imposing costs.

10. In circumstances to do complete justice between the parties, I believe that one effective opportunity should be given to the petitioner to file his written statement. Accordingly, impugned order dated 20.11.2023 is set aside, subject to Rs.15,000/- as costs payable by the petitioner to the respondents.

11. Petitioner is directed to appear before learned trial Court on due date of hearing i.e.10.04.2024 or within ten days thereafter as fixed by the Court and file his written statement and pay costs.

12. Accordingly, revision is disposed of.

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

19.03.2024
Rimpal

(RITU TAGORE)
JUDGE

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