

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

124

CR-847-2024 (O&M)

Date of decision:13.03.2024

District Manager, PUNGRAIN & another

... Petitioners

Vs.

M/S Virdoo Mal Mulakh Raj Jain Rice Mills Pvt. Ltd. & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Arjun Dhaliwal, Advocate for
Ms. Deepali Puri, Advocate for the petitioners.

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SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by the petitioners/defendants No.6 & 7 against the order dated 06.10.2023 (Annexure P-5) passed by the Civil Judge (Junior Division), Amritsar, vide which the defence of the petitioners/defendants No.6 & 7 was struck off.

2. Brief facts that are relevant for adjudication of the present revision petition are that plaintiff (respondent No.1 herein) filed a suit for declaration to the effect that the defendants have got no right, title or interest over the personal stocks of the plaintiff such as self purchased paddy, sella rice, basmati rice, bardana and belongings of the plaintiff and the defendants have got no right to lift the same, with consequential relief of mandatory injunction directing the defendants to return all the goods, stock etc. lifted from the premises of the plaintiff in the absence of the plaintiff.

3. During the pendency of the suit, notice was issued to the defendants for 09.02.2023. On 09.02.2023, counsel put in appearance on behalf of the defendants/petitioners and sought time for filing of the written

statement. Defendants No.1, 4, 5 were proceeded against ex-parte and the matter was adjourned to 05.04.2023 for service of defendant No.2 and 3. Thereafter, on 05.04.2023, an application was filed by defendant No.1 and 4 for setting aside the ex-parte order and the matter was again adjourned to 15.05.2023 for filing of reply to the said application as well as for filing of the written statement by defendant No.6 and 7 and service of defendant No.1 and 2. On 15.05.2023, petitioners were granted more time for filing of reply and fresh notice was issued to defendant No.2, 3 and 8 for 18.08.2023 and last opportunity was granted to defendant No.6 and 7 for filing of written statement. Thereafter, the matter was adjourned to 06.10.2023. On 06.10.2023, the written statement was not filed by defendant No.6 and 7 despite last opportunity. So vide the impugned order the defence of defendant No.6 and 7 was struck off. Hence, the present revision petition has been filed by the petitioners/defendants No.6 & 7 before this Court.

4. Learned counsel for the petitioners has contended that it has been repeatedly held by the Hon'ble Supreme Court in a number of judgments that the time limit for filing of the written statement under Order VIII Rule 1 CPC is not mandatory. In support of his contention, he has invited the attention of this Court to the decision of the Apex Court in **Kailash Vs. Nanku, 2005 (4) SCC 480**, whereby it has been held that the provision has to be construed as directory and not mandatory. He has further contended that the petitioners were not adopting any delaying tactics and the petitioners being government departments the process of filing written statement has to pass through various channels. He has submitted that otherwise also the case is still fixed for service of the remaining defendants

and prayed for setting aside the impugned order.

5. I have heard learned counsel for the petitioners at length and have perused the pleadings on record.

6. From the perusal of the impugned order, it transpires that inspite of granting various opportunities, written statement has not been filed by the petitioners. Even the period of more than 90 days have already been elapsed. No plausible reason had been assigned for seeking further adjournment for filing the written statement on behalf of defendants No.6 and 7 and consequently, their evidence was struck off vide the impugned order.

7. Though there is no infirmity in the impugned order, yet it will be appropriate, if in the interest of justice, one effective opportunity is granted to the petitioners to file written statement. The other party can be well compensated with costs. Therefore, the impugned order is set aside. The trial Court is directed to grant one effective opportunity to the petitioners to file their written statements subject to payment of costs of Rs.5,000/- to be paid to respondent No.1.

8. Revision petition is allowed in the aforesaid terms.

9. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

13.03.2024

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |