

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122

CR-1193-2024 (O&M)
Decided on: 27.02.2024

PAWAN

...Petitioner

Versus

LOKESH ARORA

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

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

RITU TAGORE, J. (Oral)

1. The present revision is against the order dated 14.09.2023 (Annexure P-10) passed by learned Civil Judge (Junior Division), Gurugram wherein learned Court struck off the defence of the petitioner (defendant before the learned trial Court) in a Rent Petition No.119-2021 captioned as ‘Lokesh Arora Vs. Pawan and another’. A prayer is made to permit him to file his reply in the afore-captioned Rent Petition by setting aside the impugned order.
2. Considering the limited prayer made in this revision, notice to respondent is dispensed with.
3. Learned counsel for the petitioner submits that respondent filed a petition under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (Annexure P-1) against the petitioner and his wife,

seeking their eviction from the rented property on the grounds of arrears of rent and his personal use and necessity.

4. The learned counsel submits that petitioner could not file his reply to the main petition in three opportunities afforded to him by the learned trial Court. It is stated that order of closing of his defence is harsh upon the petitioner. It has adversely impacted his statutory right to defend the petition. It is contended that the Court should not have closed his right to file the reply on technicalities. The learned counsel on behalf of the petitioner submits that petitioner undertakes to file the reply in one opportunity.

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

6. Perusal of the paper book reveals that respondent filed an ejectment petition against the petitioner and his wife on the grounds of non-payment of rent and personal necessity. The zimini order (Annexure P-3) indicates that despite being served, the petitioner did not appear and was proceeded *ex parte*. Subsequently, the petitioner filed an application to set aside *ex parte* proceeding against him. According to zimini order dated 15.03.2023 (Annexure P-6), the petitioner was permitted to contest the petition and *ex parte* proceeding order dated 23.05.2022 was set aside. The zimini orders (Annexure P-7 to P-10), passed in the aforesaid rent petition further reveal that the petitioner despite availing three opportunities failed to file his response. He was also burdened with costs but did not pay the same. Consequently, vide impugned order dated 14.09.2023 (Annexure P-10) his defence was struck off.

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 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 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.

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 opportunity be granted to the petitioner to file his reply. Accordingly, impugned order dated 14.09.2023 (Annexure P-10) is set aside, subject to Rs.25,000/- as costs payable by the petitioner (revisionist) to respondent-Lokesh Arora.

11. Petitioner is directed to appear before learned Court on due date

of hearing as fixed by the Court and file his written statement and pay the cost.

12. Accordingly, revision is allowed.

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

(RITU TAGORE)
JUDGE

27.02.2024
Rimpal

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