

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

131

CR-1491-2024 (O&M)
Decided on: 11.03.2024

Gram Panchayat Village Dhave

...Petitioner

Versus

Surjit Kaur and another

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Arun Abrol, Advocate
for the petitioner.

RITU TAGORE, J.

1. The challenge in this revision is to the order dated 15.11.2023 whereby learned trial Court has struck off the defence of the petitioner (defendant before the learned trial Court) in a Civil Suit No.1077 of 2023 captioned as Surjit Kaur Vs. Gram Panchayat etc. A prayer is made to permit the petitioner to file its pleadings in the afore-captioned civil suit by setting aside the impugned order.
2. Considering the limited prayer made in this revision, notice to respondents is dispensed with.
3. Learned counsel for the petitioner submits that respondents (plaintiffs before the learned trial Court) filed a civil suit for permanent injunction, restraining the petitioner from interfering in any manner in cultivating possession of the respondents and dispossessing them from the suit land measuring 13 Kanal 08 Marla as detailed in the head note of the

plaint (Annexure P-1) situated in the revenue estate of village Dhawe H.B. No.592 sub Tehsil Kahnuwan Tehsil and District Gurdaspur as per jamabandi for the year 2018-19 forcibly, illegally and without due course of law.

4. It is argued by the learned counsel that petitioner-Gram Panchayat through its Sarpanch Sarabjit Kaur, appeared in the Court for the first time on 14.07.2023 through the counsel and the learned counsel advised the Sarpanch to send the Resolution and may not personally appear on the next scheduled date of hearing. The learned counsel contended that Resolution in favour of the petitioner-Sarpanch or any other member of the Panchayat could not be passed due to party faction. Therefore, Resolution could not be sent before the scheduled date of hearing. It is stated that on 23.12.2023 Resolution (Annexure P-2) was passed in favour of the petitioner to pursue the proceedings in the suit and defence of the petitioner was struck off by the learned trial Court on 15.11.2023.

5. Learned counsel submits that learned trial Court before striking off the defence of the petitioner failed to appreciate that there was no fault on the part of the petitioner but on account of delayed passing of the Resolution in favour of the Sarpanch. Learned counsel contended that the learned trial Court struck off defence of the petitioner on mere technicalities causing great prejudice to the petitioner, preventing it from defending the case filed against Gram Panchayat. The counsel undertakes to file the written statement if granted one opportunity in this regard. A prayer is made to set aside the impugned order and opportunity be given to the petitioner to contest the matter before the learned trial Court.

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

7. The perusal of paper book, having reference of *zimini* orders passed by the learned trial Court would indicate that four opportunities were given to the petitioner to file the written statement but failed to present the written statement even within the extended period of 90 days from the date of appearance in the Court, leading to the striking off his defence.

8. A careful reading of 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 deal with the power of the Court and also does not explicitly takes 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 law 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 Act, 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’, reported in (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.’’

10. Although, I find that there has been inaction on part of the petitioner in 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. The counsel on behalf of the petitioner undertakes to file the written statement in one opportunity. Furthermore, the delay can always be rectified or atoned by imposing costs.

11. In circumstances to do complete justice between the parties, I believe that one opportunity be granted to the petitioner to file its written statement before the learned lower Court enabling it to put forth its stand before the Court to the assertions and allegations raised by the respondents against the petitioner. Accordingly, impugned order dated 15.11.2023 is set aside, subject to Rs.15,000/- as cost payable by the petitioner. Out of cost of Rs.15,000/-; Rs.10,000/- is to be paid to the respondents-plaintiffs and Rs.5,000/- in District Legal Services Authority, Gurdaspur. In case of default, this order shall stand automatically vacated.

12. Petitioner is directed to appear before learned trial Court on the due date of hearing as fixed by the Court and make the payment of costs and file their written statement on the date fixed or within 15 days thereafter.

13. Accordingly, revision petition is allowed in above terms.
14. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

11.03.2024
Rimpal

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