

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2182-2024
Date of Decision: 10.04.2024

LALMAN YADAVPETITIONER

VS

KHEM CHAND AND OTHERSRESPONDENT

CORAM: HON’BLE MR. JUSTICE GURBIR SINGH

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

GURBIR SINGH, J.

1. Challenge in this revision petition is to the order dated 21.11.2023 (Annexure P-8) passed by learned Civil Judge (Junior Division) Gurugram, vide which, the defence of the petitioner-defendant No.1 has been struck off on account of non-filing of written statement.
2. Learned counsel for petitioner-defendant No.1 submits that respondents No.1 to 3-plaintiffs filed a suit for declaration with consequential relief of permanent and mandatory injunction seeking the relief of declaration of sale deeds dated 12.10.1990, 18.07.1991 and 16.05.1992 as null and void and not binding upon the rights of plaintiffs. It is submitted that pursuant to notice issued in the suit on 27.03.2023, petitioner-defendant No.1 and respondent No.4/defendant No.2 caused appearance on 06.04.2023 and thereafter, case was adjourned to 25.04.2023,

on said date, case was adjourned to 02.05.2023 for filing written statement. On 02.05.2023, written statement was not filed and the case was adjourned to 01.08.2023. However, on the said adjourned date, written statement was filed only on behalf of defendant No.5/respondent No.7 and while granting last opportunity to the remaining defendants to file written statement, case was adjourned to 21.11.2023. On 21.11.2023, the following order was passed:-

“Today the case was fixed for filing WS on behalf of remaining defendants because WS was filed only by defendant no.5 and today WS filed by defendant no.3. Copy supplied to opposite party. Since, more than 7 months have passed since the appearance of defendants. Therefore, defence of remaining defendants is struck off. Now to come up on 16.04.2024 argument on application under Order 39 Rule 1 & 2 of CPC. Stay already granted is extended till next date. In case any of the parties fails to appear at 10 am on the next date, stay may be vacated.”

3. Learned counsel for the petitioner submits that the petitioner-defendant No.1 is 71 years of age, and it was due to his ill-health, he could not file written statement in time. It is submitted that written statement is necessary for the just decision of the case. He seeks one opportunity to file written statement.

4. I have heard the submissions of learned counsel for the petitioner and have gone through the paper book.

5. A perusal of impugned order would show that though there is some inaction on the part of the petitioner as despite availing numerous opportunities, he could not file written statement, but keeping in view the fact that procedure is handmaid to the administration of justice and it is meant for advancement of justice, petitioner should not be non-suited merely on procedural technicalities and no prejudice would be caused to the

respondents-plaintiffs if one opportunity is given to the petitioner as they would be compensated with cost, so the impugned order deserves to be set aside.

6. Notice of this petition is not being issued to the respondents, as it may linger on the case and may cause financial burden on them.

7. In view of above, the order dated 21.11.2023 (Annexure P-8) is hereby set aside and one opportunity is granted to the petitioner-defendant No.1 to file written statement, however, that would be subject to payment of costs of Rs.10,000/-, out of which, Rs.5,000/- shall be paid to the respondents-plaintiffs and Rs.5,000/- shall be deposited with the concerned District Legal Services Authority. The petitioner-defendant No.1 shall file written statement on 16.04.2024, the date fixed before the trial Court and no further opportunity shall be given to him for this purpose. In case of default, this order shall automatically stand vacated.

8. Present revision petition stands disposed of accordingly.

9. If the respondents are not satisfied with this order, they may move an application within 30 days to recall the same.

10.04.2024	(GURBIR SINGH)
<i>renu</i>	JUDGE
<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>