



CR-2351-2024 (O&M) -1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR-2351-2024 (O&M)
Date of decision:20.05.2024

Vijay Vishwas

... Petitioner

Vs.

GAD Convent School Education Society & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Kamal Narula, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

CM-8651-CII-2024:

1. Application is allowed as prayed for. Zimni orders w.e.f. 17.11.2022 to 18.07.2023 as Annexure P-6 are permitted to be taken on record.

2. CM stands disposed of.

Main case:

1. The instant revision petition has been filed by petitioner/defendant No.3 against the order dated 09.05.2023 passed by the Civil Judge, Sr. Division, Ferozepur vide which the defence of the petitioner/defendants was struck off due to non filing of written statement.

2. Brief facts for adjudication of the present revision petition are that the respondent No.1/plaintiff/GAD Convent Educational Society has entered into an agreement with respondent No.2 dated 13.04.2022 and

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affidavit regarding such agreement has been reduced into writing as respondent No.2 is owner in possession of a school, namely, Guru Amar Dass Education Society Sadardine, District Ferozepur. As per such agreement, the building of the school has been given on lease for 20 years to the petitioner. It was also settled that the possession of the said building was taken by the petitioner through the abovesaid society on 13.04.2022. Thereafter, petitioner spent money on the development of infrastructure of the building. Due to increase of the strength of the students, respondent No.2 started interfering in the school activities. When they did not stop the same, the plaintiff filed a civil suit for a decree of declaration to the effect that the agreement and affidavit dated 13.04.2022 Annexures P-2 and P-3 respectively purported to have been executed by defendant No.1 in favour of defendant No.2 through defendant No.3 with regard to leasing out or parting with possession of GAD Convent School situated at Village Sadardin Wala, Teshil and District Ferozepur, is illegal, null and void, without jurisdiction and authority or competency and without consideration and is inoperative against the valuable rights of the plaintiff society and as such, is not binding on the plaintiff. Consequential relief of permanent injunction restraining the defendants from interfering into the working or management or control of the school on the basis of oral and documentary evidence of all kinds, is also sought.

3. Notice in the suit as well as in the application under Order 39 Rules 1 & 2 CPC was issued upon the petitioner/defendant on 17.11.2022



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and thereafter on 04.02.2023. The petitioner appeared through his counsel but during that period, talk regarding the compromise were going on between the petitioner and respondents No.1 & 2. Thereafter, while passing the impugned order dated 09.05.2023, defence of the petitioner/defendant Nos.2 & 3 was struck off. Hence, aggrieved against the said order, the petitioner/defendant No.3 has knocked the doors of this Court by way of filing of the present revision petition.

4. Learned counsel for the petitioner has contended that the written statement was not filed by the petitioner only because of the reason that the talk regarding compromise were going on, whereas the written statement was ready with the petitioner. He has argued that non-filing of the written statement was neither willful nor intentional. He has submitted that one effective opportunity may be provided to the petitioner for filing the written statement as there is ample evidence available with him which he want to produce before the Court below by proving that how respondents No.1 & 2 in connivance with each other has cheated him.

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

6. From the perusal of the record, it transpires that despite availing sufficient opportunities, defendant No.3/petitioner failed to file written statement. Even the statutory period of 90 days for filing of the written statement has also elapsed.



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7. It has been held in a catena of judgments that Proviso to Rule 1 (8) CPC is directory and not mandatory in nature and in the justified circumstances, the time limit provided under statute for filing of the written statement in civil proceedings can be extended by the Court. Moreover, hyper technical approach is not to be adopted by the Court as procedural laws are meant for imparting substantial justice and not to obstruct the judicial proceedings.

8. Keeping in view the above, 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 petitioner to file his written statement to defend his case. The other party can be well compensated with costs. Therefore, the trial Court is directed to grant one effective opportunity to the petitioner to file his written statement subject to payment of costs of Rs.8,000/- to be paid to respondents No.1 & 2. Accordingly, the impugned order dated 09.05.2023 is set aside and the revision petition is allowed in the aforesaid terms.

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

20.05.2024
harjeet

(SUKHVINDER KAUR)
JUDGE

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