

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

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**CR-2328-2024 (O&M)
Date of decision:22.04.2024**

Navdeep Singh & another

... Petitioners

Vs.

Vinay Sethi & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. G.S. Bains, Advocate for the petitioners.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by petitioners/defendant No.12 to 16 against the order dated 28.03.2024 (Annexure P-13) passed by the Civil Judge, Sr. Division, SAS Nagar Mohali, vide which the defence of the petitioners/defendants was struck off.

2. Brief facts of the case for adjudication of the present revision petition are that plaintiffs/respondent Nos.1 and 2 filed a suit for mandatory injunction directing the petitioners and proforma respondents No.3 to 13 to execute sale documents i.e. agreement to sell, sale deed of 4 acres land along with other requisite documents in favour of the plaintiffs i.e. respondents No.1 and 2 and to take further steps in compliance of agreement/token money/*sai* dated 22.08.2020 for sale of immovable property measuring 15 acres 5 kanals (as mentioned in the head note of the plaint) situated at Village Naugiari, Tehsil Mohali, District SAS Nagar

and a suit for permanent injunction restraining defendants No.1 to 16 from alienating the suit property to anyone except the plaintiff, for restraining defendants No.20 & 21 from granting any CLU or approval of any kind to defendants No.1 to 19 and for restraining defendants from doing any act, direct or indirect, malafidely to debar the plaintiff from their legal rights.

3. Upon issuing notice, petitioners along with proforma respondents No.6 and 7 appeared before the trial Court and filed their written statement denying that they have entered into any agreement dated 22.08.2020 with the plaintiffs/respondents No.1 & 2 and they were free to sell their property to anyone. Plaintiffs filed replication to the aforesaid written statement alleging therein that the land had been sold to respondents No.4 and 5. Respondents No.14 and 19 (defendants No.17 and 22 in civil suit) also filed their written statement and supported the pleadings of respondents No.1 & 2 that agreement dated 22.08.2020 was executed between plaintiffs and defendants No.1 and 2. Petitioners/defendants No.15 and 16 filed an application under Order 7 Rule 11 CPC for rejection of the plaint filed by the respondents No.1 & 2 (plaintiffs) which was disposed of vide order dated 10.10.2022. Feeling aggrieved of the same, the petitioners approached this Court by way of filing a revision petition being CR-5855-2022 which is pending adjudication before this Court. Thereafter, the petitioners also filed application under Order 7 Rule 11 CPC for rejection of the plaint. The said application was dismissed by the trial Court vide order dated 21.03.2023. Against the said order, the petitioners filed another revision

petition being CR-2390-2023 which is also pending adjudication before this Court. The plaintiffs/respondents No.1 and 2 moved an application for amendment of the plaint on 18.08.2023 in view of order dated 10.10.2022. The respective parties submitted their replies. The trial Court vide order dated 29.11.2023 while allowing the amendment application took the amended plaint on record. The proforma defendants No.3 to 8, 10, 18 and 19 have filed their respective amended written statements. In the meantime, defendant No.3 had expired and his legal heirs were brought on record. Various opportunities were granted for filing amended written statements but the same were not filed. Thereafter on 27.03.2024, amended written statement was filed on behalf few proforma respondents/defendants and the case was adjourned to 28.03.2024 for filing amended written statements on behalf of the remaining defendants. On the said date, the amended written statement was not filed and the trial Court vide the impugned order dated 28.03.2024 struck off the defence of the defendants. Hence, the petitioners/defendant Nos.12 to 16 have knocked the doors of this Court by way of filing of the present revision petition.

4. Learned counsel for the petitioners has contended that due to communication gap between the petitioners and their counsel, they could not reach the Court premises in time to sign the written statement and the same could not be filed. He has further contended that non-filing of the written statement was neither willful nor intentional and one effective opportunity may be provided to the petitioners for filing their written statement.

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 despite availing sufficient opportunities, the defendants/petitioners failed to file their amended written statement. 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. So, in the instant case also, 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 their written statement to defend their case. The other party can be well compensated with costs. Therefore, the trial Court is directed to grant one effective opportunity to the petitioners to file their amended written statement subject to payment of costs of Rs.10,000/- to be paid to the respondents. Accordingly, the impugned order dated 28.03.2024 (Annexure P-13) is set aside and the revision petition is allowed in the aforesaid terms.

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

22.04.2024

harjeet

(SUKHVINDER KAUR)

JUDGE

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No