

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

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**CR-2330-2024 (O&M)
Date of decision:22.04.2024**

Bishambar Dayal

... Petitioner

Vs.

Ashish Manjhu

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Sumit Jain, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by petitioner/defendants against the order dated 26.10.2023 passed by the Additional Civil Judge, Sr. Division-cum-SDJM, Ratia, vide which the defence of the petitioner/defendant was struck off.

2. Brief facts of the case for adjudication of the present revision petition are that the plaintiff/respondent filed a suit for possession by way of specific performance on the basis of agreement to sell dated 05.03.2021, registered vide No.3431 dated 05.03.2021 read with amendment agreement to sell dated 16.03.2021, registered vide No.3538 dated 17.03.2021 before the Sub Registrar, Ratia, District Fatehabad executed by the petitioner/defendant in favour of the respondent/plaintiff qua the building constructed over the plot measuring 1 kanal comprised in Khewat No.766, Khatauni No.951, Khasra No.292//5/1/1 (1-0) situated in Ratia, District Fatehabad.

3. Upon issuing notice in the aforesaid suit, defendant approached his counsel, who appeared on 25.05.2022 and the matter was adjourned to 03.08.2022 for filing of written statement and power of attorney. Thereafter on 03.08.2022, learned counsel for the defendant sought adjournment for filing of written statement and the matter was again adjourned to 07.09.2022 and further for 02.11.2022. Matter was again got adjourned various times and on 28.07.2023 adjournment was granted to file written statement subject to costs and then adjourned to 29.08.2023. On that date case was not taken up and it was adjourned to 03.10.2023 on which date last opportunity was granted to the petitioner/defendant to file his written statement and by imposing a further cost of Rs.1300/- to be deposited in SDLSA, Ratia and then the matter was got adjourned to 26.10.2023. On 26.10.2023, the trial Court vide the impugned order struck off the defence of the petitioner/defendant, when he failed to file the written statement. Hence, the petitioner/defendant 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 plaintiff has filed the instant suit only with the motive to grab the property of the petitioner. The petitioner was not aware of pendency of the proceedings before the trial Court as his counsel never apprised him about the same. He has argued that due to his health issues, the petitioner could not appear before the trial Court for filing his written statement. The non-filing of the written statement was neither willful nor intentional but the same was only due to his medical condition. In support of his contentions,

he has placed reliance upon the judgment of the Apex Court in **State of Punjab Vs. Shamlal Murari & others, 1976 SC 1177**. He has submitted that in the interest of justice, one effective opportunity may be provided to the petitioner for filing of his written statement.

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

6. From the perusal of the impugned order, it transpires that defendant appeared in the instant case on 25.05.2022 and since then the case is pending for filing of the written statement. It has been specifically mentioned in the impugned order that despite availing number of opportunities, the defendant failed to file his written statement and even the statutory period of 90 days for filing of the written statement had also elapsed.

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. 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 given 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.8000/- to be paid to the respondent.

Accordingly, the impugned order dated 26.10.2023 (Annexure P-1) is set aside and the revision petition is allowed in the aforesaid terms.

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

(SUKHVINDER KAUR)
JUDGE

22.04.2024
harjeet

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