

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

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CR-2296-2024 (O&M)

Date of decision:22.04.2024

General Manager-cum-mining Officer, District Industries Centre, Ferozepur,
Punjab

... Petitioner

Vs.

Jaswant Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Ms. Rishu Madan, AAG, Punjab for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by petitioner/defendant against the order dated 15.03.2023 (Annexure P-1) passed by the Additional Civil Judge, Sr. Division, Ferozepur, 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 No.1 filed a suit for decree of declaration that plaintiff is not liable to pay any type of penalties/fine as alleged in the notices/memos sent to him by defendants No.1 & 2 and the same are illegal, null and void, inoperative and ineffective on the rights of the plaintiff and permanent injunction was also sought from recovering any amount on the basis of the aforesaid notices/memos.

3. Upon issuing notice, summons in the suit were received in the office of the petitioner on 14.12.2022 and on receipt of such summons,

the petitioner applied before the office of the Chief Engineer for providing of counsel on government expenses or directing the public prosecutor to defend the case. Thereafter vide letter No.232/2 legal Cell/2023 dated 24.01.2023 forwarded the said letter to the office of Director, Prosecution and Litigation, Additional Secretary, Punjab Government. In response to the said letter, the Director, Prosecution and Litigation, Additional Secretary, Punjab directed the District Attorney, Ferozepur to defend the case on behalf of the petitioner. The petitioner failed to file his written statement in the absence of government sanction to defend the case. On 15.03.2023, the trial Court vide the impugned order struck off the defence of the petitioner/defendant No.1. Hence, the petitioner/defendant No.1 has knocked the doors of this Court by way of filing of the present revision petition.

4. Learned state counsel appearing on behalf of the petitioner has contended that the trial Court has not properly appreciated the fact that as per the rules, the petitioner, being government department, was required to obtain necessary permission to get engaged the public prosecutor to defend the case. She has further contended that while passing the impugned order, the trial Court had observed that period of 90 days has already expired and sufficient opportunities have already been granted to the petitioner but the trial Court had not considered the fact that the sanction of the government to defend the case had not been received. Therefore, in the absence of any sanction from the Government, it was not possible for the petitioner to file the written statement. She has argued that mandatory period of 90 days for filing of written statement has not

been afforded to the petitioner from the date of sanction given by the government i.e. 11.04.2023 for filing of written statement, but the trial Court by ignoring this vital aspect has passed the impugned order. She has submitted that non-filing of the written statement was neither willful nor intentional but the same was due to the procedural technicalities. She has submitted that in the interest of justice, one effective opportunity may be provided to the petitioner for filing of written statement to the plaint as well as reply to the stay application.

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 despite availing sufficient opportunities, the defendant failed to file his written statement. Even the statutory period of 90 days for filing of the written statement has 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 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.8000/- to be paid to the respondents. Accordingly, the impugned order dated 15.03.2023 (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 |