

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

132

CR-2447-2024 (O&M)
Decided on: 24.04.2024

Dinesh Singh and others

...Petitioners

Versus

Om Parkash and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Lakshay Bector, Advocate
for the petitioners.

RITU TAGORE, J. (ORAL)

1. This revision petition is directed against the order dated 24.05.2023 (Annexure P-3) and order dated 21.11.2023 (Annexure P-6) passed by the Court of learned Civil Judge (Junior Division), Ludhiana, whereby the defence of the petitioners has been struck off and permission to file written statement has also been declined.

2. Given the limited scope of the prayer, issuance of notice to the contesting respondents No. 1 and 2 is deemed unnecessary and is hereby dispensed with at this stage.

3. Learned counsel for the petitioners submits that respondents No. 1 and 2, filed a suit for separate possession, after partition, by way of metes and bounds, in respect of the suit property, a shop/property bearing No. B-IV/513 measuring 23-11/18 Sq. Yards as shown in colour red in the site plan attached, and with the boundaries, as detailed in the head note of the plaint, situated at Meena Bazar, Ludhiana and for permanent injunction against the petitioners, based on several pleas outlined in the plaint. Upon

notice from the learned trial Court, the petitioners entered their appearance in this case.

4. It is stated that petitioners are the siblings of the respondents, and since the dispute involves family members, the petitioners were hopeful of an amicable settlement in the case. While referring to *zimini* orders (Annexure P-2 Colly.), learned counsel submitted that the case was adjourned to explore the possibility of some amicable resolution of dispute between the parties, and the matter was also sent to the Mediation Centre in this regard. Learned counsel submits that due to the aforementioned reason, the petitioners could not file their written statement. Furthermore, petitioners remained under the impression that the matter would be resolved amongst themselves, and subsequently the suit would be withdrawn.

5. Learned counsel also submitted that even after the failure of amicable settlement, the parties through their counsel, again attempted to settle the matter by way of compromise and also sought adjournment from the learned Court. To support his submission, learned counsel referred to the *zimini* order dated 03.11.2023. It is stated that, given the circumstances, failure to file the written statement within the stipulated period was not intentional. It is stated that petitioners are willing to file their written statement, and this fact is evident from the application (Annexure P-4) filed by them seeking permission from the learned Court to file the written statement.

6. Learned counsel submits that with passing of the impugned orders, they have been prevented from filing their written statement in a suit filed by the respondents against them and proforma respondents No. 3 to 5, thereby causing serious prejudice to them. Learned counsel undertakes to file the written statement if one opportunity is given to the petitioners.

7. I have heard the learned counsel for the petitioners and gone through the paper book with his able assistance.

8. It is suffice to say that respondents have instituted a civil suit against the petitioners for separate possession of the suit property after partition by way of metes and bounds (Annexure P-1). Perusal of the *zimini* orders (Annexure P-2 colly.) indicate that the petitioners caused their appearance in the suit on 28.09.2022 and thereafter, the case was posted for filing written statement on their behalf.

9. Perusal of *zimini* orders further indicate that learned counsel for the parties also notify the learned Court regarding the possibility of compromise between the parties and requested to refer the matter to mediation. Accordingly, the case was referred to the Mediation Centre to explore the possibility of some settlement between the parties, which unfortunately could not be settled. Thereafter, the case was again scheduled for the filing of a written statement on behalf of the petitioners. However, they failed to file the same within the stipulated period despite being given sufficient opportunities.

10. Nonetheless, upon gleaning through paper-book, particularly the *zimini* orders, it is revealed that even after the striking off the defence of the petitioners, again an attempt was made for settlement between the parties, but it failed to bear any result. Even the request of the petitioners to permit them to file written statement also met with the fate of rejection vide the impugned order dated 21.11.2023 (Annexure P-6).

11. Although, I find that there is some inaction on the part of the petitioners in prosecuting their case with due diligence, but still, it could not be suggested that the delay has been caused by the petitioners for any *mala fide* reasons. It is well established that the learned Court should adopt a

liberal approach and rights of the parties should be adjudicated on the merits of the controversy rather thwarting the same on rigid technicalities.

12. A careful reading of the language of Order 8 Rule 1, CPC reveals that it imposes an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him/her or within the extended time falling within 90 days. The provision does not explicitly take away or restrict the Court's authority to accept a written statement filed beyond the time as provided for. Further, nature of provision contained in Order 8 Rule 1, CPC is procedural. It is not a part of the substantive law. However, the object behind amending the Order 8 Rule 1, CPC in its current form is to expedite hearing rather than hinder or scuttle the same. The process of justice may be accelerated and hastened, but the fundamental fairness, which is a basic element of justice, cannot be permitted to be compromised.

13. It is a settled position of law that all the rules of procedure are handmaid of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Learned counsel on behalf of the petitioners undertakes to present their written statement in one opportunity. Furthermore, the delay can always be atoned by imposing costs.

14. In circumstances to do complete justice between the parties, I believe that one effective opportunity should be given to the petitioners to file their written statement. Accordingly, impugned order dated 24.05.2023 (Annexure P-3) and order dated 21.11.2023 (Annexure P-6) are set aside against the petitioners, subject to Rs.25,000/- as costs payable by the petitioners to the respondents.

15. Petitioners are directed to appear before learned trial Court on

due date of hearing as fixed by the learned trial Court and learned trial Court shall provide the petitioners one effective opportunity to file their written statement.

16. It is made clear that in case of default, this order shall stand automatically vacated.

17. Respondents, if not satisfied with this order, may move an application for recalling the same within 30 days.

18. Accordingly, revision petition is allowed in the aforesaid terms.

19. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

24.04.2024
pj

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No