

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

128

CR-2584-2024 (O&M)
Date of decision: 30.04.2024

Sarwati and Others

...Petitioners

Versus

Harish Kumar and Others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Jasmer Singh Rozera, Advocate
for the petitioners.

RITU TAGORE, J.

1. This revision is directed against the order dated 11.12.2023 (Annexure P-1) passed by learned Civil Judge (Junior Division), Palwal by virtue of which the defence of the petitioners has been struck off in a case bearing No. Civil Suit No.1246-2022 titled as Harish Kumar & another Vs. SatyaPrakash and others.
2. Learned counsel for the petitioners contends that respondents (plaintiffs before the learned trial Court) filed the above mentioned suit for partition and permanent injunction with consequential relief thereof against petitioners and others, on several pleas as outlined in the plaint (Annexure P-2).
3. Learned counsel further submits that upon being put to notice by the learned trial Court, the petitioners and some of the proforma respondents caused their appearance in the aforementioned suit and thereafter the case was posted for filing the written statement of the petitioners and others as well as service of some of the proformarespondents. Learned counsel submits that

during the aforesaid proceedings, petitioner No.1 (defendant No.11 before the learned trial Court) was initially proceeded *ex parte* and later on he was allowed to join the proceedings as evident from the order dated 21.10.2023 (Annexure P-6).

4. It is candidly conceded by learned counsel for the petitioners that petitioners No. 2 and 3 (who are defendants No. 7 and 8 before the learned trial Court) had afforded three opportunities; since, their appearance to file the written statement, but could not file the same because the case was posted for appearance of some of the proforma respondents and further the case was pending for adjudication for setting aside the *ex-parte* order against petitioner No.1, the petitioners could not file the written statement as the respondents are members of same family. However, learned counsel for the petitioners urged that no reasonable opportunity was afforded to petitioner No.1 to file his written statement, after setting aside the *ex parte* proceedings against him on 21.10.2023 (Annexure P-6). Learned counsel stated that on the next date of hearing on account of non-filing of written statement, the defence of petitioners No.1 to 3 was struck off.

5. Learned counsel for the petitioners submits that with passing of the impugned order, the petitioners have been prevented from filing their written statement in a suit for possession by way of partition and permanent injunction filed by respondents No.1 and 2 against them. It is stated that order of striking off the defence of the petitioners is harsh upon them as they have been deprived to contest the matter on merits. The learned counsel states that one opportunity be given to the petitioners to file their written statement.,lest they shall suffer irreparable loss.

6. I have heard the learned counsel for the parties and gone through the paper book.

7. Given the limited prayer, issuance of notice to the contesting respondents is hereby dispensed with, at this stage.

8. Perusal of the paper book shows that contesting respondents No.1 and 2 have instituted a suit for partition and permanent injunction with consequential relief thereof, against petitioners and others on various pleas taken in the plaint (Annexure P-2). The *zimni* orders (Annexures P-3 to P-6) indicate that the petitioners No.2 and 3 caused their appearance in the aforesaid suit on 17.04.2023 and on account of non-appearance of petitioner No.1, she was proceeded *ex parte* on the even date. Thereafter, the petitioner No.1 was allowed to join the proceedings on 21.10.2023 and the case was posted for filing written statement by the petitioners and other proforma respondents on 11.12.2023. However, the petitioners failed to comply with the order by filing written statement and as such, their defence was struck off.

9. Although, I find that the petitioners No.2 and 3 have been somewhat negligent in not filing their written statement despite taking the opportunities but, still, it could not be suggested that delay has been caused by them for any *mala fide* reasons. It is well established that the Court should adopt a liberal approach and rights of the parties should be adjudicated on the merits of the controversy rather scuttling their rights on rigid technicalities.

10. A careful reading of the language of Order 8 Rule 1 of 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 of CPC is procedural. It is not a part of the substantive law. However, the object behind amending the Order 8 Rule 1 of 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.

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

12. In the given 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 is set aside, subject to Rs.1,000/- as costs to be paid in the District Legal Services Authority, Palwal by the petitioners.

13. Petitioners are directed to appear before learned trial Court on due date of hearing i.e., 26.07.2024 and file their written statement and pay costs.

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

15. Respondents No. 1 and 2 if not satisfied with this order, may move an application for recalling of this order within 30 days.

16. Accordingly, Revision Petition is allowed in above terms.

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

(RITU TAGORE)
JUDGE

30.04.2024
smriti

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