



CR-2563-2024 (O&M) -1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR-2563-2024 (O&M)
Date of decision:30.05.2024

Usha Rani & another

... Petitioners

Vs.

Malkiat Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Ms. Aarti, Advocate for the petitioners.

...

SUKHVINDER KAUR, J.**CM-9323-CII-2024:**

1. Application is allowed as prayed for. Zimni orders as Annexure P-4 are permitted to be taken on record.
2. CM stands disposed of.

Main case:

1. The instant revision petition has been filed by petitioners/defendants No.1 & 3 against the order dated 19.01.2024 passed by the Civil Judge, Jr. Division, SBS Nagar, vide which defence of the petitioners/defendants No.1 & 3 was struck off due to non filing of written statement.
2. Relevant facts leading to filing of the present revision petition are that the plaintiffs filed a suit for declaration to the effect that they are owners in possession of the land to the extent of 1/5 share each, out of the



land bearing khata No.1038/1282, 1572/1913 showing in the name of defendant No.1., bearing khasra No.64//8/1, (2-12) 69//3/3 (5-12), 343 (0-9) 539 (1-9) being ancestral property and further the alleged Will dated 26.05.2011 alleged to be executed by Harbans Singh is null and void and is a result of fraud and misrepresentation and has no adverse effect upon the legal rights of the plaintiffs and defendant No.4 over the suit property and the mutation No.11357 sanctioned in the name of Manjit Singh is liable to be set aside and further the mutation No.11405 sanctioned in the name of Usha Rani after the death of Manjit Singh is liable to be aside and jamabandi is liable to be corrected in the name of plaintiffs and defendants, situated in the area of village Pharala, Tehsil Banga, District SBS Nagar as entered in the jamabandi for the year 2015-16 along with consequential relief of permanent injunction to the effect that defendant No.1 be permanently restrained in any manner from alienating, mortgaging, transferring, gifting away the suit property to anyone.

3. The civil suit was filed by the plaintiffs on 01.07.2020, on which date previous, counsel for the petitioners/defendants No.1 & 3 put in appearance and filed his Power of Attorney on 18.02.2021. Matter was adjourned for filing of written statement on behalf of the defendants. The counsel for the defendants had gone abroad and defendants engaged new counsel who put in appearance on 21.07.2023 and filed his Power of Attorney. The case was adjourned to 31.08.2023 for filing of the written statement. Thereafter, the case was repeatedly adjourned to 16.10.2023,



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07.12.2023 and 19.01.2024. On 19.01.2024, while passing the impugned order, defence of the petitioner/defendant Nos.1 to 3 was struck off. Hence, aggrieved against the said order, the petitioners/defendants No.1 & 3 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 the trial Court has gravely erred while passing the impugned order and did not consider the fact that due to unavoidable circumstances, counsel for the petitioners could not file written statement. He has argued that non-filing of the written statement was neither willful nor intentional. He has submitted that in case the petitioners are not granted an opportunity to file their written statement, then the same would cause irreparable loss to them and therefore, they seek indulgence of this Court for grant of one effective opportunity for filing of the 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 record, it transpires that despite availing numerous opportunities and imposition of costs, defendants No.1 & 3/petitioners failed to file 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

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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.

8. Keeping in view the above, 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 written statement subject to payment of costs of Rs.5,000/- to be paid to the respondents. Accordingly, the impugned order dated 19.01.2024 is set aside and the revision petition is allowed in the aforesaid terms.

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

30.05.2024*harjeet***(SUKHVINDER KAUR)****JUDGE**

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