



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

133

CR-2718-2024 (O&M)
Date of decision: 14.05.2024

Jaspal Singh

... Petitioner

Vs.

Anmolpreet Kaur & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Ajay Pal Singh Rehan, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by petitioner/defendant against the order dated 02.01.2024 (Annexure P-3) passed by the Civil Judge, Jr. Division, Batala, District Gurdaspur vide which the defence of the petitioner/defendant was struck off due to non filing of written statement.

2. Brief facts for adjudication of the present revision petition are that the respondents/plaintiffs filed a suit for permanent injunction against the defendant/petitioner seeking a decree of permanent injunction restraining the petitioner/defendant from interfering in possession of the respondents/plaintiffs in the suit property measuring 8 kanals 18 marlas comprised in khewat No.76/77, khatoni No.233, rectangle No.5, killa No.16 min. (5-0), rectangle No.11 No.2/2/2 (4-17), 7/2 (3-16) as entered in jamabandi for the year 2020-21, situated in Village Panwan, Tehsil



Dera Baba Nanak, District Gurdaspur.

3. Notice in the suit as well as in the application under Order 39 Rules 1 & 2 CPC was issued upon the petitioner/defendant on 15.11.2022 but the service upon the petitioner/defendant was not completed due to incomplete address and then the case was adjourned to 20.12.2022. On 20.12.2022, service was again not completed and fresh notice was issued upon the defendant for 09.01.2023. After service having been effected, petitioner/defendant could not appear and then on 09.02.2023, petitioner/defendant was proceeded against ex-parte and the case was adjourned to 16.03.2023, 18.03.2023 and 24.03.2023 for ex-parte plaintiff evidence. But on the said dates, the ex-parte plaintiff evidence was not produced by the plaintiffs. Thereafter, on 28.04.2023, petitioner/defendant filed an application for setting aside the ex-parte proceedings which was allowed on 17.05.2023 and the matter got adjourned to 15.07.2023 for filing of written statement and reply to the stay application. On said date, written statement and reply to the stay application was not filed and then it was adjourned to 10.08.2023. Thereafter, the matter was got adjourned from time to time but the defendant/petitioner failed to file written statement. Ultimately, while passing the impugned order dated 02.01.2024, defence of the petitioner/defendant was struck off. Hence, aggrieved against the said order, 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 trial



Court has not appreciated the fact that the petitioner/defendant could not file written statement within the stipulated time period of 90 days, because the plaintiffs/respondents have failed to supply the documents in terms of order dated 23.08.2023. He has further contended that it is a settled preposition of law that the cases are to be decided on merits after hearing and taking the evidence from both the parties, but the trial Court has proceeded in haste while passing the impugned order, especially when the respondents/plaintiffs failed to supply the necessary documents. He has argued that non-filing of the written statement was neither willful nor intentional and one effective opportunity may be provided to the petitioner for filing the 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 record, it transpires that despite availing sufficient opportunities and imposition of costs, the defendant/petitioner 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 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 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.10,000/- to be paid to the respondents. Accordingly, the impugned order dated 02.01.2023 (Annexure P-3) is set aside and the revision petition is allowed in the aforesaid terms.

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

14.05.2024

harjeet

(SUKHVINDER KAUR)

JUDGE

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No