



CR-2842-2024 (O&M) -1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

140

CR-2842-2024 (O&M)
Date of decision:13.05.2024

Amarjit Singh

... Petitioner

Vs.

Kesar Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Nitish Garg, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by petitioner/defendant No.2 against the order dated 20.10.2023 (Annexure P-3) passed by the Civil Judge (Jr. Division), SBS Nagar, vide which the defence of the petitioner/defendant No.2 was struck off.

2. Brief facts of the case for adjudication of the present revision petition are that plaintiff/respondent No.1 filed a suit for declaration to the effect that the plaintiff is owner in possession of land measuring 0 kanal 4 marlas out of land measuring 0 kanal 24 marlas, situated in the area of village Rehpa, Tehsil Banga, District SBS Nagar and as detailed in the head note of the plaint. Further a suit for declaration to the effect that the alleged agreement dated 19.04.2017 allegedly executed by defendant No.1 Gurdish Kaur @ Jagdish Kaur in favour of Amarjit Singh/defendant No.2 is illegal, invalid, unlawful, without consideration, null and void,

**CR-2842-2024 (O&M) -2-**

forged and fabricated and same is neither binding nor admitted by the plaintiff and it is liable to be set aside and also not enforceable in the eyes of law. Relief of permanent injunction was also sought.

3. Upon issuing notice, petitioner had appeared through his counsel and the case was adjourned for service of the other defendants and for filing of written statements. During the pendency of the suit, various opportunities were provided to the defendant for filing of the written statement but he failed to file the written statement. Then the trial Court vide the impugned order dated 20.10.2023 struck off the defence of the defendant. Hence, aggrieved against the said order, the petitioner/defendant No.2 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 multiple litigations were going on between the parties. Such matters were compromised and were dismissed as withdrawn. Petitioner was of the view that this matter would also be withdrawn. He has further contended that the petitioner was out of country from 23.06.2023 to 04.04.2024 and he was not aware about the passing of the impugned order. He has argued that the impugned order is perverse in view of the settled principle of law that the claim of the parties should be adjudicated upon merits rather than on technicalities. No party should be deprived of the effective opportunity to contest the *lis*. He has submitted that non-filing of the written statement was neither willful nor intentional and in case the petitioner is not granted



CR-2842-2024 (O&M) -3-

an opportunity to file the written statement, then the same would cause irreparable loss to him and therefore he seeks indulgence of this Court for grant of one effective opportunity to file the written statement.

5. I have heard learned counsel for the petitioner at length and have perused the record.

6. From the perusal of the impugned order, it transpires that despite availing of numerous opportunities and imposition of costs, 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/defendant No.2 to file his written statement to defend the 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 the written statement subject to payment of costs of Rs.10,000/- to be paid to respondent No.1. Accordingly, the impugned order dated 20.10.2023



CR-2842-2024 (O&M) -4-

(Annexure P-3) is set aside and the revision petition is allowed in the aforesaid terms.

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

13.05.2024
harjeet

(SUKHVINDER KAUR)
JUDGE

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