



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-2758-2024 (O&M)
Date of decision: 28.05.2024

Anita @ Nita

...Petitioner

Versus

Balwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Rakesh Sobti, Advocate for the petitioner.

VIKAS SURI, J.

1. The present revision petition under Article 227 of the Constitution of India has been preferred by the petitioner-defendant for setting aside order dated 20.03.2024, passed by learned Civil Judge (Junior Division), Amritsar, whereby the defence of the petitioner was ordered to be struck off for not filing the written statement within a period of 90 days from putting in appearance.

2. The facts in brief are that the respondent-plaintiff filed a suit for permanent injunction restraining the petitioner from interfering and/or intermeddling in the peaceful possession over vacant plot comprising of 53.5' x 16.5' admeasuring 3 marlas, situated at Village Nizampur, Tehsil and District Amritsar, according to sale deed dated 13.12.2021; and from dispossessing the respondent-plaintiff from the suit property or creating any hindrance in the construction of the same except in due course of law. Notice of the aforesaid suit along with the



application filed under Order 39 Rules 1 & 2 CPC was ordered to be issued vide order dated 04.10.2023 for 13.10.2023. However, the case was taken up on 12.10.2023 as the Presiding Officer was to proceed on leave on the date fixed and the proceedings were deferred to 01.11.2023. The petitioner entered appearance in person on the said hearing and sought time for filing written statement. The matter was posted for 02.02.2024, on which date, learned counsel for the petitioner put in appearance and filed his power of attorney. The case was adjourned for filing of written statement and reply to the stay application. On the next hearing, learned counsel for the petitioner sought an adjournment for filing written statement, which was declined and the defence of the petitioner-defendant was ordered to be struck off. On the said date, an application under Order 7 Rule 14 CPC for production of documents had also been moved on behalf of the petitioner-defendant, which is still pending.

3. Learned counsel for the petitioner submits that the defence of the petitioner has been ordered to be struck off on the second hearing itself and petitioner seeks only one opportunity to file the written statement and undertakes to file the same on the date already fixed before the trial Court.

4. Learned counsel for the petitioner further submits that the proceedings before the Court below are now pending for 25.07.2024.

5. Heard learned counsel for the petitioner and with his able assistance perused the record.

6. For the reasons as are mentioned herein, the main petition is



taken up for final disposal, without issuance of notice to the other party, as on doing so, it may not only cause delay but unnecessarily burden the opposite party with expenses to cause appearance in the present petition.

7. Reliance is placed upon ***Salem Bar Association vs. Union of India, (2005) 6 SCC 344*** to contend that the provisions contained in Order 8 Rule 1 CPC have been held to be directory in nature. In the present case, a perusal of the *zimni* orders show that the petitioner put in appearance in person on 04.10.2023 and on the next adjourned date, he was represented by counsel and on the hearing following the same, the impugned order was passed whereby his defence was ordered to be struck off.

8. A three judge Bench of the Apex Court in ***Desh Raj vs. Balkishan (Dead) through Proposed Legal Representative Ms. Rohini, (2020) 2 SCC 708***, while examining the timeline for filing of written statement held that in a non-commercial dispute matter, the unamended provisions of Order 8 Rule 1 CPC continues to be directory and does not do away with the inherent discretion of the Courts to condone delay.

9. In ***Bharat Kalra vs. Raj Krishan Chhabra, 2022 SCC Online 613***, while relying upon the earlier judgment in ***Kailash vs. Nanko and others, (2005) 4 SCC 480***, Apex Court held that the provision of Order 8 Rule 1 CPC is not mandatory and the delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing the written statement is unreasonable.

10. Admittedly, the trial Court after noticing that period of more than 90 days has already elapsed since the defendant put in appearance



but failed to file the written statement, struck off the defence of the petitioner-defendant vide impugned order dated 20.03.2024. It is well settled that the Court should not be too harsh to strike off the defence of the defendant(s) at very early stage. The rules of procedure are the handmaids of justice and cannot be allowed to defeat substantial justice between the parties.

11. In the light of the above discussion and the law laid down by the Apex Court, this Court is of the considered opinion that the ends of justice would be adequately met if the delay in filing written statement is condoned subject to payment of costs. It is settled law that procedural law is always subservient to and is in aid of justice. No prejudice would be caused to the respondent-plaintiff in case the suit is decided on merits, after affording a proper opportunity to contest the same.

12. Accordingly, the present revision petition is allowed. The impugned order dated 20.03.2024 is set aside, subject to payment of Rs.5000/- as costs, to be paid to the respondent-plaintiff and one opportunity is granted to the petitioner-defendant to file the written statement on or before the next date fixed before the trial Court. It is made clear that failing to file the written statement or to pay costs in terms of this order, the petitioner would not be entitled to any further opportunity for the said purpose and the trial Court would proceed with the matter without this order having any bearing on the trial.

13. As the instant revision petition is being disposed in the absence of the other party, liberty is granted to the respondent-plaintiff



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to seek recalling of the present order, if valid grounds for the same are made out.

- 14. The revision petition is disposed of in the aforesaid terms.
- 15. Pending applications, if any, also stand disposed of.

May 28, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No