

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

137

CR-2862-2024(O&M)
Decided on: 14.05.2024

Manager Circle Head Office of American Tower Company

...Petitioner

Versus

Sandeep Kumar and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Sumeet Jain, Advocate
for the petitioner.

RITU TAGORE, J.

1. The challenge in this revision petition is to the order dated 14.03.2024 (Annexure P-1), whereby learned Additional Civil Judge (Senior Division) (in short referred to as ‘the learned trial Court’), struck off the defence of the petitioner (defendant No.4 before the learned trial Court) in the suit No.CS-347-2020 captioned as ‘Sandeep Kumar and another Vs. Punjab State Power Corporation Limited and others’.
2. Considering the limited prayer made in this revision petition, notice to present respondents is dispensed with.
3. Learned counsel representing the petitioner (defendant No.4 before the trial Court) submits that respondents No. 1 and 2 (plaintiffs before the learned trial Court), instituted a suit for recovery as compensation/damages due to the death of their mother, while she was performing her duty as a Safai Sewak in the office of respondent No.8. The



plaintiffs alleged that she suffered an electric shock from the mobile tower installed in the office of PUNSUP, Abohar Road Bye Pass Sri Muktsar Sahib, as detailed in the plaint (Annexure P-2).

4. It is stated that petitioner was never served in the suit. The petitioner became aware of the suit's pendency when informed by a colleague of the empanelled Advocate. Thereafter, upon checking on e-Court portal, the fact of pendency of the suit against the petitioner was confirmed and counsel was directed to appear. Accordingly, counsel appeared but the presence of counsel was not marked as evident from the *zimini* orders (Annexure P-5 to P-7). On 14.3.2024 when petitioner's counsel requested an adjournment for filing the written statement, it was rejected and defence was struck off due to the expiry of statutory period of 90 days.

5. While referring to *zimini* orders (Annexures P-3 to P-7), learned counsel contends that due to the reasons explained above, it is explicit that petitioner has not willfully abstained from filing his written statement. This order has harshly affected the petitioner, who has been prevented from defending its case. The valuable right of the petitioner has been foreclosed by the learned trial Court, causing serious prejudice to its rights in the suit. The learned counsel urges that written statement is ready with the petitioner and beseeches one opportunity to tender the written statement, with the prayer to allow the petition.

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

7. It is a matter of record that respondents No. 1 and 2 have filed a civil suit for recovery of account as compensation/damages against the petitioner and others. The *zimini* orders placed on record also indicate that



due to some inadvertent mistake on the part of the learned trial Court the presence of the petitioner was not marked in *zimini* orders dated 16.12.2023; 11.01.2024; 12.02.2024 and correction in this regard was made in order dated 14.03.2024. Since petitioner failed to submit the written statement within the statutory period, resulting in the striking off the defence of the petitioner vide the impugned order.

8. A careful reading of the language of Order 8 Rule 1, 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 deal with the power of the Court and also 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, CPC is procedural. It is not a part of the substantive law. However, the object behind amending the Order 8 Rule 1, 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.

9. It is trite 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. In ***Bharat Kalra Vs. Raj Kishan Chabra, 2022 (3) Apex Court Judgements (SC) 598*** Hon'ble the Supreme Court observed as under:-

“3. Admittedly, the suit for injunction filed by the plaintiff is not the one which is governed by the Commercial Court Acts, 2015. Therefore, the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory in view of the



judgment of this Court reported as ‘Kailash v. Nankhu and others’, (2005) 4 SCC 480.

4. In view of aforesaid judgment, we find that the delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing of the written statement is unreasonable.

5. Consequently, we allow the present appeal. The order passed by the High Court is set aside. The written statement already filed is taken on record.’’

10. While the facts as pleaded by the petitioner indicate that petitioner has been appearing in the suit but did not file the written statement within the statutory period, suggesting some inaction and negligence on the part of the petitioner in prosecuting the litigation with due diligence, but still, it cannot be suggested that delay has been caused by the petitioner for any malevolent 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, thwarting the same on rigid technicalities. Furthermore, the counsel on behalf of the petitioner asserts that written statement is ready and undertakes to file it in one opportunity. Further, delay can always be rectified by imposing costs.

11. In circumstances to do complete justice between the parties, I believe that one effective opportunity be granted to the petitioner to file the written statement before the learned trial Court enabling the petitioner to put forth its stand before the Court to the assertions and allegations raised by the respondents No.1 and 2 against it. Accordingly, impugned order dated 14.03.2024 (Annexure P-1) is set aside, subject to payment of Rs.2000/- as costs by the petitioner to District Legal Services Authority, Muktsar Sahib.



12. Petitioner is directed to appear before the learned trial Court on the due date of hearing as fixed by the Court and tender the costs and file his written statement.
13. It is made clear that in case of default, this order shall stands automatically vacated.
14. Respondents No.1 and 2 if not satisfied with this order, may move an application for recalling of this order within 30 days.
15. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

14.05.2024
Rimpal

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