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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR-3222-2024 (O&M)
Date of decision:29.05.2024

Mandeep Kaur @ Surinder Kaur

... Petitioner

Vs.

Malkit Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Abhishek Khullar, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by petitioner/defendant against the order dated 09.04.2024 passed by the Additional Principal Judge Family Court, Ludhiana vide which the defence of the petitioner/defendant was struck off due to non filing of the written statement.

2. Brief facts for adjudication of the present revision petition are that the plaintiff filed a suit for mandatory injunction directing the defendant, his associates, friends etc. not to harass the plaintiff by filing false and baseless criminal complaints against him and also to let the plaintiff enter into his own house situated at adjoining to water works, near Gill Garden, Main Road, Ishar Nagar, Sua Road backside GNE College, Ludhiana by opening the main door of the residential portion of the house in question.



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3. The above said civil suit was filed before the trial Court on 02.12.2023 and thereafter the power of attorney on behalf of the petitioner was filed on 10.01.2024. Then the case was adjourned to 26.02.2024 for filing of written statement and again adjourned to 26.02.2024 for the same purpose. Thereafter, while passing the impugned order dated 09.04.2024, 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 present petitioner and the respondent are husband and wife and are having a dispute between them. The respondent intends to dispossess the petitioner out of the matrimonial home. He has further contended that in case the petitioner is not allowed to file her written statement, it will cause irreparable loss to her which cannot be compensated in any manner. He has submitted that non-filing of the written statement was neither willful nor intentional and one effective opportunity may be provided to the petitioner for filing of 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 the defendant put in appearance before the trial Court on 10.01.2024 and since then despite availing effective opportunities, defendant/petitioner failed to file her written statement.

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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 her written statement to defend her 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 her written statement subject to payment of costs of Rs.5000/- to be paid to the respondent. Accordingly, the impugned order dated 09.04.2024 is set aside and the revision petition is allowed in the aforesaid terms.

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

29.05.2024
harjeet

(SUKHVINDER KAUR)
JUDGE

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