



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Revision No. 3638 of 2024 (O&M)
Date of Decision: 03.07.2024

Ajay

..... Petitioner

Versus

Roshan Lal Sharma

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Shiv Kumar Rana, Advocate
for the petitioner-defendant.

HARKESH MANUJA, J. (ORAL)

The petitioner-defendant, by way of present revision petition, seeks setting aside of the order dated 07.05.2024 passed by learned Civil Judge (Senior Division), Bhiwani (**hereinafter to be referred as “trial Court”**), in Civil Suit No. 593 of 2023, instituted on 28.04.2023, titled “**Roshan Lal Sharma Versus Ajay**”, whereby defence of the petitioner has been struck off.

[2] Facts leading to the present case are that the respondent-plaintiff filed a suit for declaration, besides seeking relief of permanent injunction restraining petitioner-defendant from alienating, creating charge or changing the suit land. Upon notice, petitioner appeared before the trial Court through his counsel on 18.05.2023 (as averred in the petition at para-7); however, despite having been granted sufficient (five) opportunity, no written statement was filed and resultantly, his defence

was ordered to be struck off by the trial Court vide order dated 07.05.2024.

[3] Impugning the aforesaid order dated 07.05.2024 passed by the trial Court, learned counsel for the petitioner submits that the mistake of non-filing of written statement at the instance of petitioner has occurred primarily on account of non-defending of the case by his counsel before the trial Court, who late told the petitioner that due to some family dispute, he could not submit the written statement in time. He also submits that after passing of the impugned order dated 07.05.2024, the petitioner has changed his counsel. He further submits that in the absence of any defence being put-forth by way of filing written statement, the petitioner will not be able to defend the suit in an effective manner which definitely will cause serious prejudice to his rights therein.

[4] After hearing learned counsel for petitioner and gone through the paper-book as well as the zimni orders passed by the trial Court, which have been annexed with the petition at Annexure P-2 (colly), I find substance in the submissions made on behalf of the petitioner.

[5] In the humble opinion of this Court, I find that in case, the impugned order is allowed to stand and the petitioner is deprived of his right to file written statement, he will not be able to put-forth his defence to the case set up by the respondent-plaintiff in the suit. Though, there appears to be lack of due diligence on the part of petitioner while contesting the suit, however, considering the fact that ever since the

passing of impugned order, the proceedings in the suit have not moved further, as such, it would be in the interest of justice to grant one effective opportunity to the petitioner, so as to file written statement in order to protect his substantial rights involved in the suit.

[6] Even the Hon'ble Supreme Court in "*Kailash Vs. Nanhku and ors.*", 2005 (2) RCR (Civil) 379, while considering the provisions of Order VIII Rule 1 CPC, has held that the same being part of procedural law and hence directory in nature. Still further, keeping in view the substantial justice, the Hon'ble Supreme Court under somewhat similar circumstances, in "*Siddalingayya Vs. Gurulingappa and ors.*", 2018 (1) RCR (Civil) 543, upheld the opportunity of filing written statement granted by the High Court. Even otherwise, upholding of the impugned order will cause serious prejudice to the rights of petitioner as he will not be able to contest the case set up by the respondent.

[7] Accordingly by adopting a pragmatic approach; rather than being hyper-technical, the revision petition is **allowed**. Impugned order dated 07.05.2024 passed by the trial Court, is ordered to be set aside, **thereby granting one effective opportunity to the petitioner** so as to file his written statement on the date fixed before the trial Court, i.e. 02.08.2024.

[8] Keeping in view the nature of proceedings, the present petition is being decided without issuing notice to the respondent-plaintiff, least it may delay the progress of suit instituted at his instance and may also burden him with unnecessary cost towards litigation expenses.

[9] It is made clear that in case, the respondent finds any mis-statement of fact on the part of petitioner, he would be at liberty to approach this Court by moving an appropriate application in this regard.

[10] The aforesaid order shall be subject to payment of costs of Rs.10,000/-, which shall be deposited by the petitioner with the trial Court on the date fixed, to be disbursed in favour of respondent-plaintiff.

July 03, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No