



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Revision No. 3700 of 2024 (O&M)
Date of Decision: 05.07.2024

Harjit Singh
..... Petitioner

Versus

Bhupinder Singh and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Rimple Saini, Advocate
for the petitioner-defendant No. 1.

HARKESH MANUJA, J. (ORAL)

The petitioner-defendant No. 1, by way of present revision petition, seeks setting aside of the order dated 15.05.2024 (Annexure P-5) passed by learned Civil Judge (Junior Division), Batala, District Gurdaspur (**hereinafter to be referred as “trial Court”**), in Civil Suit No. 1072 of 2023, instituted on 28.08.2023, titled “***Bhupinder Singh Versus Harjit Singh and others***”, whereby the defendants, including the petitioner, were barred from filing written statement.

[2] Respondent No. 1-plaintiff filed a suit for possession by way of partition through metes and bounds of the suit land. Upon notice, petitioner-defendant No.1 appeared before the trial Court through his counsel on 03.10.2023; however, despite been granted sufficient (eight) opportunity, no written statement was filed and resultantly, the defence was ordered to be struck off by the trial Court vide order dated 15.05.2024

(P-5).

[3] Impugning the aforesaid order dated 15.05.2024 passed by the trial Court, learned counsel for the petitioner submits that the reason for non-filing the written statement is that upon an application filed at the instance petitioner-defendant No. 1, some documents viz. copy of sale deeds dated 10.11.1982 & 10.08.1983, copy of jamabandi and copy of judgment of Appellate Court, were sought to be supplied by respondent No. 1-plaintiff, while the said application was dismissed vide order dated 02.01.2024 passed by the trial Court, ordering that the same have already been supplied to the petitioner. He further submits that since the said documents, were not supplied, thus, the petitioner again filed an application on 15.05.2024, however, the trial Court again dismissed the application vide impugned order dated 15.05.2024 (P-5) and barred the defendants, including the petitioner, from filing written statement. He also 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-6 (colly), I find substance in the submissions made on behalf of the petitioner.

[5] In the humble opinion of this Court, 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 respondent No. 1-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, a 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 respondent No. 1-plaintiff.

[7] Accordingly by adopting a pragmatic approach; rather than being hyper-technical, the revision petition is **allowed**. Impugned order dated 15.05.2024 (P-5) passed by the trial Court, is ordered to be set aside, **thereby granting one effective opportunity to the defendants** so as to file his written statement on the date fixed before the trial Court, i.e.

08.07.2024.

[8] Keeping in view the nature of proceedings, the present petition is being decided without issuing notice to respondent No. 1-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-plaintiff 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 05, 2024
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(HARKESH MANUJA)
JUDGE

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