



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

123 CR-3850-2024 (O&M)
Decided on: 12.07.2024

HDFC Bank Limited

...Petitioner

Versus

Bhupinder Pal Singh and another

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Arjun Shukla, Advocate
for the petitioner.

RITU TAGORE, J.

1. This revision is for setting aside order dated 03.05.2024 (Annexure P-1) passed by learned Civil Judge (Junior Division), Sirsa, wherein learned trial Court struck off the defence of the petitioner, in a Civil Suit bearing No.388-2022 captioned as ‘Bhupinder Pal Singh Vs. Phool Singh and another’, with further prayer to allow and grant one opportunity to the petitioner to file written statement in the aforementioned suit.
2. Learned counsel for the petitioner submits that respondent No.1 instituted a suit for possession by way of specific performance of agreement dated 17.02.2022 (Annexure P-4) against the respondent No.2, the contesting defendant and the petitioner-bank (the proforma defendant). Upon being put to notice, the petitioner appeared in the above suit, but due to the non-availability of the bank record, precise instructions and information



could not be made available to Sh. S. L. Sachdeva, Advocate, who was entrusted to represent the bank in the suit. Because of lack of information regarding the pendency of the suit from the branch at Sirsa, appropriate instructions could not be given to the Advocate of the bank. The learned counsel further submits the aforesaid communication gap occurred because the matter was transferred to DFSO Delhi and Ms. Manisha Antil, who was handling the account declared as NPA, had resigned from the job. Mr. Manish, another officer did not take appropriate steps in the matter, and he also resigned from the Bank in April 2023. In these circumstances, the petitioner-bank could not file the written statement in the Court within the statutory period of 90 days resulting in striking off the petitioner's defence. It is stated that the application (Annexure P-3) for recalling the order dated 29.05.2023 for striking off the defence and its restoration was dismissed by the learned trial Court vide the impugned order without appreciating the facts narrated by the petitioner bank.

3. Learned counsel states that default on part of the petitioner bank is not wilful but due to the unavoidable circumstances explained above. It is urged that if the petitioner is not permitted to file the written statement, the petitioner may lose its valid right of defence to contest the suit against the respondent No.1. It is stated that respondent No.2 (defendant No.1 before the trial Court) is intentionally not contesting the suit (Annexure P-3). He is a guarantor-mortgagor to the petitioner-bank with respect to the subject property involved in the suit. Respondent No.1 in his pleadings, has pleaded that suit property is mortgaged with the petitioner-bank and the documents (Annexures P-5 to P-10) indicate that respondent No.2 is a guarantor-



mortgagor to the petitioner-bank and the petitioner has initiated the proceedings for recovery of the loan. It is stated that impugned order has harshly affected the petitioner bank which has been prevented from filing the response, causing serious prejudice to its rights in the suit. The learned counsel urges that the petitioner-bank may be given one opportunity to tender the written statement. On above submissions, a prayer is made to allow the petition.

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

5. The perusal of the paper book and the documents placed on record, shows that respondent No.1 instituted a civil suit for specific performance against the respondent No.2-Phool Singh, the contesting defendant and arrayed petitioner-bank as proforma defendant. The learned counsel for the petitioner could not deny that petitioner-bank was granted five opportunities including three last opportunities, to file the written statement. Despite this, it failed to file the response within the statutory period of 90 days.

6. A careful reading of the language of Order 8 Rule 1, Civil Procedure Code, 1908 (hereinafter referred to as '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.

7. It is trite law that all rules of procedure are the handmaid of justice. In an adversarial system, no party should ordinary 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 Act, 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.’’

8. Although, I find that the petitioner has been negligent in not prosecuting the litigation with due diligence but still, it cannot be suggested that delay has been caused by the petitioners for any malevolent reasons. It is well established that the learned 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 undertakes to file the written statement in one opportunity. Keeping that in view, it is also an established practice of law that the delay can always be rectified or atoned by imposing costs.

9. As such, in these 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-bank to put forth its stand before the learned Court to the assertions and allegations raised by the respondent No.1 (plaintiff) against it. Accordingly, impugned order dated 03.05.2024 (Annexure P-1) is set aside, subject to payment of Rs.15,000/- as costs payable by the petitioner-bank to respondent No.1 (plaintiff).

10. Petitioner is directed to appear before learned trial Court on the due date of hearing as fixed by the learned trial Court and make the payment of costs and file their written statement on the date fixed.

11. It is made clear that in case of default, this order shall automatically stand vacated.

12. Respondent No.1 if not satisfied with this order, may move an application for recalling of this order within 30 days.

13. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

12.07.2024
Rimpal

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