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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-3974-2024 (O&M)

Date of Decision : 13.11.2024

Saroj Devi @ Saroj Devi Agarwal

... Petitioner(s)

Versus

Sanjay Kumar & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. M.S. Longia, Advocate for the petitioner.

Mr. Munish Gupta, Advocate for respondent No.1.

ALKA SARIN, J. (Oral)

CM-19468-CII-2024

1. This is an application for placing on record the certified copy of order dated 01.10.2024 whereby the revision petition (CR-5756-2024) filed by defendant-respondent No.12 herein, whose defense was also struck off, was allowed.

2. Notice of the application.

3. Mr. Munish Gupta, Advocate, accepts notice on behalf of the non-applicant/respondent No.1 and states that he has no objection if the present application is allowed.

4. In view of the above and for the reasons stated in the application, the same is allowed.

5. Learned counsel for the parties are *ad idem* that the main case (CR-3974-2024) may be taken on Board today itself and disposed off in terms of order dated 01.10.2024 passed in CR-5756-2024.

6. With the consent of the learned counsel for the parties, the main case (**CR-3974-2024**) is taken on Board today itself.

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7. Present revision petition has been preferred by defendant No.4-petitioner challenging the orders dated 18.04.2022 (Annexure P-2) and 25.01.2023 (Annexure P-3) whereby the defense of defendant No.4-petitioner was struck off and the application for recalling the order dated 18.04.2022 was also dismissed.

8. Learned counsel for defendant No.4-petitioner would contend that after passing of the order dated 18.04.2022, an application was filed by defendant No.4-petitioner herein for recalling the order dated 18.04.2022, which was decided on 25.01.2023. The learned counsel for the defendant No.4-petitioner would contend that counsel for the plaintiff-respondent No.1 had made a statement before the Trial Court that the plaintiff-respondent No.1 would have no objection if an opportunity is granted to the defendant No.4-petitioner to file a written statement subject to heavy costs. The learned counsel would further contend that the defendant No.4-petitioner would be willing not only to compensate the plaintiff-respondent No.1 by way of costs but also to pay costs for the loss of Court time. The learned counsel for the defendant No.4-petitioner has further contended that given one opportunity the defendant No.4-petitioner herein would file her written statement.

9. Mr. Munish Gupta, Advocate, counsel appearing on behalf of the plaintiff-respondent No.1 would contend that the written statement was not filed despite numerous opportunities and that on 18.04.2022 the impugned order has rightly been passed. However, the learned counsel for the plaintiff-

respondent No.1 has candidly admitted that in the application filed by defendant No.4-petitioner herein for recall of the order dated 18.04.2022, he had made a statement that he would have no objection if defendant No.4-petitioner was permitted to file her written statement subject to heavy costs.

10. Heard.

11. Hon'ble Supreme Court in the case of **Desh Raj vs. Balkishan(D) through proposed LR Ms. Rohini [(2020) RCR (Civil) 807]** has held the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 to be directory in nature in the case of non-commercial suits. Admittedly, in the present case the defense of two defendants i.e. defendant No.12 and defendant No.4 (petitioner herein) was struck off vide order dated 18.04.2022. Defendant No.4-petitioner filed an application for recall of the said order, which application was dismissed on 25.01.2023 (Annexure P-3). Against the said order, the present revision petition has been filed and on 18.07.2024 while issuing notice of motion it was noticed that the counsel for the plaintiff-respondent No.1 had made a statement before the Trial Court that he would have no objection if an opportunity was granted to defendant No.4-petitioner to file her written statement subject to heavy costs. Learned counsel for the plaintiff-respondent No.1 has candidly admitted that the statement was infact made.

12. In view of the above, this Court deems it fit to allow the present revision petition. One opportunity is granted to the defendant No.4-petitioner herein to file her written statement subject to payment of Rs.50,000/- as costs to be paid to the plaintiff-respondent No.1. It is made clear that payment of

costs to the plaintiff-respondent No.1 shall be a condition precedent.

13 Present revision petition is disposed off in the above terms.

Pending applications, if any, also stand disposed off.

13.11.2024

Yogesh Sharma

(ALKA SARIN)

JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO