



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR-4162-2024 (O&M)
Decided on: 29.07.2024

Nikhil Kanojia

...Petitioner

Versus

State Bank of India

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Saurav Kanojia, Advocate
for the petitioner.

RITU TAGORE, J.

1. This revision is for setting aside order dated 08.05.2024 (Annexure P-12) passed by learned Civil Judge (Senior Division), Rupnagar, wherein learned trial Court struck off the defence of the petitioner, in a Civil Suit bearing No.623-2023 captioned as ‘State Bank of India (SBI) through Santosh Kumar Dohare Vs. Nikhil Kanojia etc’, with further prayer to allow and grant one opportunity to the petitioner to file written statement in the aforementioned suit.
2. Considering the limited prayer made in this revision, notice to respondents is dispensed with at this stage.



3. Learned counsel for the petitioner submits that respondent-bank instituted a civil suit for recovery of Rs.5,41,170/- inclusive of principal and interest plus other incidental charges up to 14.06.2023 along with future interest on several pleas as detailed in the plaint (Annexure P-1) against petitioner-Nikhil Kanojia.

4. Upon being put to notice, the petitioner appeared in the above suit through his counsel on 16.08.2023 and thereafter matter was adjourned to 13.10.2023 for filing written statement. On that date the petitioner filed an application for supplying the copies of the documents annexed with the suit filed by the respondent and those documents were supplied to the petitioner on 07.11.2023. Thereafter, the case was scheduled for filing written statement by the petitioner.

5. Learned counsel submits that petitioner is working as Food Inspector in PUNSUP and due to his special duties assigned by the department and further from the month April 2024 to June 2024 he was assigned duty in general elections, therefore, he was unable to give proper and timely instructions to his counsel that led to non-filing of the written statement and passing of the impugned order.

6. Learned counsel states that default on part of the petitioner 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. It is stated that impugned order has harshly affected the petitioner and has been prevented from filing the written statement, causing serious prejudice to his rights in the suit. The learned counsel urges that the



petitioner may be given one opportunity to tender the written statement. On above submissions, a prayer is made to allow the petition.

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

8. 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.

9. 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.’’

10. 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 petitioner 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 by imposing costs.

11. 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 to put forth his stand before the learned Court to the assertions and allegations raised by the respondent (plaintiff) against him. Accordingly, impugned order dated 08.05.2024 (Annexure P-12) is set aside, subject to payment of Rs.20,000/- as costs payable by the petitioner to respondent-bank (plaintiff).

12. 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 his written statement on the date fixed or within 15 days thereafter.
13. It is made clear that in case of default, this order shall automatically stand vacated.
14. Respondent if not satisfied with this order, may move an application for recalling of this order within 30 days.
15. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

29.07.2024
Rimpal

Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No