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

134

CR-4227-2024

Date of Decision: 31.07.2024

Hoshiyar Singh

....Petitioner

Versus

Suraj Bhan

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Ivneet Singh Pabla, Advocate
for the petitioner.

VIKAS SURI, J. (Oral)

1. Through this petition filed under Article 227 of the Constitution of India, petitioner Hoshiyar Singh (defendant No.1) assails order dated 18.03.2024 (Annexure P-7) passed by learned Civil Judge (Junior Division) Bahadurgarh, whereby the defence of defendants No.1 and 2 was ordered to be struck off for having failed to file written statement within stipulated time.
2. Briefly stated the respondent-plaintiff filed a suit for permanent injunction against the petitioner and respondent No.2 alleging that the suit property is jointly owned by them and has not been partitioned as yet. In view of the same, defendants have no right to alienate specific portion of suit property or to change its nature by way of construction or installing mobile tower of cellular company or to create any third party interest therein.
3. Notice of the suit was issued for 04.09.2023. However, as the learned Presiding Officer was to proceed on leave on the said date, the case was taken up earlier than the date fixed for proper orders and the proceedings



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were adjourned to 26.09.2023. The petitioner (defendant No.1) appeared in person on the said date and sought time to engage an Advocate and for filing written statement. The said request was accepted and the matter was adjourned to 25.10.2023, for effecting service upon respondent No.2 as well as for filing written statement on behalf of defendant No.1, i.e. petitioner herein. On the next date of hearing, defendant Nos.1 and 2 were represented by an Advocate, who filed his power of attorney and sought time for filing written statement and reply to the injunction application. The proceedings were deferred to 08.01.2024. However, on the adjourned date as the learned Presiding Officer was to proceed on leave, the matter was again taken up for proper orders prior to the date fixed and was adjourned to 18.03.2024, on which date, the defence of defendants was struck off. Aggrieved by aforesaid, the petitioner has invoked jurisdiction of this Court by way of present petition.

4. Learned counsel for the petitioner contends that the time prescribed under Order 8 Rule 1 CPC is directory in nature. Reliance is placed upon *Salem Bar Association vs. Union of India*, (2005) 6 SCC 344; *Bharat Kalra vs. Raj Krishan Chhabra*, 2022 SCC Online 613 and *Kailash vs. Nanko and others*, (2005) 4 SCC 480. He further submits that written statement was ready with the counsel but unfortunately on account of his ill health and medical condition, he could not attend the Court on 18.03.2024 i.e. date of hearing on which the defence of the petitioner was ordered to be struck off. He seeks only one opportunity for doing the needful.

5. I have heard learned counsel for the petitioner and perused the record with his able assistance.



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6. A perusal of the record shows that notice to the petitioner (defendant No.1) was issued vide order dated 24.08.2023 returnable for 04.09.2023 but the matter could not be taken up as the Presiding Officer proceeded on casual leave, which necessitated deferring the proceedings. In compliance to the notice received of the suit, the petitioner appeared in person on the specified date and sought time to engage an Advocate and for filing written statement. It may be noticed here that at that stage, fresh notice was issued to defendant No.2 for 25.10.2023. The petitioner thus, got only two effective opportunities to file his written statement before his defence was ordered to be struck off vide impugned order dated 18.03.2024. In ***Bharat Kalra's case*** (supra) while placing reliance upon ***Kailash's case*** (supra), the Apex Court held that the provision of Order 8 Rule 1 CPC is not mandatory and the delay in filing of written statement could very well be compensated with costs but denying the benefit of filing the written statement is unreasonable.

7. In ***Desh Raj vs. Balkishan (Dead) through Proposed Legal Representative Ms. Rohini, (2020) 2 SCC 708***, a three Judge Bench of the Hon'ble Supreme Court had also examined the timeline for filing of written statement and laid down that in a non-commercial dispute matter, the unamended provision of Order 8 Rule 1 CPC continues to be directory and does not do away with the inherent discretion of the Courts to condone delay.

8. In the light of above discussion and the law laid down by the Apex Court, I am of the considered opinion that ends of justice would be adequately met if the delay in filing written statement is condoned subject to



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payment of costs. It is well established that no prejudice would be caused to the other side in case the suit is decided on merits, after affording a due opportunity to contest the same. It is settled law that the procedural law is always subservient to and is in aid of justice.

9. Accordingly, the present revision petition is allowed. The impugned order dated 18.03.2024 is set aside, subject to payment of Rs.5,000/- as costs, to be paid to the plaintiff-respondent and one opportunity is granted to petitioner (defendant No.1) to file his written statement on or before the next date fixed before the trial Court, which is informed to be 16.08.2024. It is made clear that failing to file the written statement or to pay costs in terms of this order, the petitioner (defendant No.1) would not be entitled to any further opportunity for the said purpose and the trial Court would proceed with the matter without this order having any bearing on the trial.

10. As the present revision petition is being disposed in the absence of respondent-plaintiff, liberty is granted to him to seek recalling of the present order, if valid grounds for the same are made out.

11. The revision petition is allowed in the aforesaid terms.

12. Pending applications, if any, also stand disposed of.

July 31, 2024

Varinder

**(VIKAS SURJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No