

2024:PHHC:099162



128 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4310-2024

Decided on:-02.08.2024

Mohit Aneja

....Petitioner..

VS.

Hunar and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Manu Loona, Advocate,
for the petitioner.

Ms. Riffi Birla, Advocate,
for respondent No.1.

HARKESH MANUJA J. (Oral)

1. By way of present revision petition filed under Article 227 of the Constitution of India, challenge has been laid to an order dated 15.07.2024 passed by learned Civil Judge (Senior Division) Fazilka in Civil Suit No. 259 of 2020, titled as "*Hunar Birla vs. Mohit Aneja etc.*", whereby defence of the petitioners/defendants has been struck off.

2. Facts leading to the present case are that respondent No.1-plaintiff filed a suit for declaration along with mandatory injunction and for grant of compensation on account of damages suffered by respondent No.1-plaintiff as a result of wrong declaration of the result of photography contest and the defamatory language used by respondent No.4-defendant No.4 in connivance with petitioner and other respondents on the basis of oral as well

as other documentary evidence.

Upon notice, petitioner-defendant No.1 appeared before the trial Court and thereafter, filed an application under Order 7 Rule 11 CPC (Annexure P-2) for rejection of the plaint for non-affixation of proper Court fee as per the compensation claimed by respondent No.1/plaintiff. Reply to the aforementioned application was filed on 10.03.2021, thereafter, the case remained pending for arguments thereupon. In the meanwhile, respondent No.1-plaintiff filed an application seeking amendment of plaint under Order 6 Rule 17 CPC, which came to be allowed, simultaneously, application under Order 7 Rule 11 CPC, filed by the petitioner, was also disposed of being infructuous, vide common order dated 18.01.2024. In pursuance thereof, the amended plaint was filed on 14.05.2024 and case was adjourned for filing of written statement, however, despite having been granted sufficient opportunities, the same was not filed and resultantly, defence of the petitioner-defendant No.1 was ordered to be struck off by the trial Court on 15.07.2024.

3. Impugning the aforesaid order dated 15.07.2024 passed by the trial Court, learned counsel for the petitioner submits that in spite of the fact that written statement was ready, the same could not be filed due to the reason that the counsel representing him before the trial Court had gone to Patiala for admission of her minor daughter in the Boarding School. He further submits that in the absence of any defence been 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. On the other hand, the prayer made herein has been vehemently

opposed at the instance of learned counsel appearing on behalf of respondent No.1 while submitting that the petitioner-defendant No.1 was granted five (05) effective opportunities to file the written statement but the effort always on his part was to delay the proceedings in the suit and thus, the impugned order warrants no interference.

5. After hearing learned counsel for parties and gone through the paper-book as well as the zimni orders passed by the trial Court, which have been annexed with the petition as Annexures P-1, P-5 & P-6 (colly), I find substance in the submissions made on behalf of the petitioner.

6. In the humble opinion of this Court, in case, the impugned order is allowed to stand, the petitioner would be 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, as 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.

7. 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 the respondent(s).

8. Accordingly by adopting a pragmatic approach; rather than being hyper-technical, the revision petition is allowed. Impugned order dated 15.07.2024 passed by the trial Court, is ordered to be set aside, thereby granting one effective opportunity to the petitioner so as to file his written statement on the date fixed before the trial Court.

9. The aforesaid order shall be subject to payment of costs of Rs.15,000/-, to be deposited by the petitioner with the trial Court on the date fixed and the same shall be disbursed in favour of respondent No.1-plaintiff.

02.08.2024
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(HARKESH MANUJA)
JUDGE

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