



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

144

CR-4373-2024 (O&M)

Decided on: 05.08.2024

KULDEEP SINGH AND ANOTHER

...Petitioners

Versus

BALKARAN SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. P.K.S. Phoolka, Advocate
for the petitioners.

RITU TAGORE, J.

1. This revision, filed under Article 227 of the Constitution of India, is for setting aside order dated 14.12.2023 (Annexure P-1) passed by learned Civil Judge (Junior Division), Bathinda, wherein learned trial Court struck off the defence of the petitioners, in a Civil Suit bearing No.930-2023 captioned as 'Balkaran Singh etc. Vs. Kuldeep Singh and another', with prayer to allow and grant one opportunity to the petitioners, to file a 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 petitioners submits that contesting respondents No.1 to 3/plaintiffs, instituted a suit for possession of land measuring 2 kanal 7 marla situated in village Chughe Kalan, Tehsil and



District Bathinda, as detailed in the plaint (Annexure P-2) against the petitioners/defendants with assertions that the petitioners forcibly and illegally had taken the suit land from them, and further prayed for an injunction to restrain the petitioners from alienating any portion of the suit land, by way of sale, mortgage, exchange etc. or raising any sort of construction on the suit land to their detriment. Learned counsel submits that pursuant to the notice issued by the learned trial Court, they appeared through their counsel on 26.07.2023 and thereafter the case was adjourned to 08.09.2023 for filing written statement and reply to the stay application. Learned counsel contends that the matter was again adjourned to 30.10.2023 and then to 14.12.2023 as the petitioners were in the process of preparing the written statement by collecting all the material facts and documents in support thereof.

4. Learned counsel further contends that due to inadvertent mistake of the office of counsel for the petitioners representing them before the learned trial Court, the date was wrongly noted as 16.12.2023 instead of 14.12.2023, due to which the written statement could not be filed. To support his contention, the learned counsel placed on record the photocopy of the case diary of the learned counsel representing the petitioners. It is stated that learned trial Court in arbitrary and unjustified manner, closed the evidence and the application moved by the petitioners for recalling of the order was also erroneously dismissed by the learned trial Court vide order dated 14.05.2024 (Annexure P-6). It is thus urged that the orders passed by the learned trial Court are wholly arbitrary and have acted harshly upon the petitioners, who have been prevented from presenting their case. It is prayed



that opportunity be granted to the petitioners to file written statement and present their evidence.

6. Learned counsel states that default on part of the petitioners is not wilful but due to the unavoidable circumstances explained above. It is urged that if the petitioners are not permitted to file the written statement, they may lose their valid right of defence to contest the suit against the respondents. The learned counsel urges for grant of an opportunity to tender the written statement. On these submissions, a prayer is made to allow the petition.

7. I have heard learned counsel for the petitioners 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, the 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 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 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 petitioners have not explicitly challenged the order dated 14.05.2024 in their prayer clause, however, it is pleaded that their application for recall was also dismissed vide the order *ibid* (Anneuxre P-6) and have also prayed for providing them the opportunity to participate in the suit proceedings by submitting their written statement and presenting their evidence. From the facts on record, it is apparent that the petitioners have been negligent in prosecuting the litigation with due diligence, but still, it cannot be suggested that delay has been caused by the petitioners for any *mala fide* 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 than being thwarted by rigid technicalities. Furthermore, the counsel on behalf of the petitioners, undertakes to file the written statement in one effective



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 petitioners to file their written statement before the learned trial Court enabling them to put forth their stand before the learned Court to the assertions and allegations raised by the respondents (plaintiffs) against them. Accordingly, impugned orders dated 14.12.2023 (Annexure P-1) and 14.05.2024 (Annexure P-6) are set aside, subject to payment of Rs.20,000/- as costs payable by the petitioners to respondents (plaintiffs).

12. Petitioners are directed to appear before the learned trial Court on the due date of hearing as fixed by the learned trial Court and make payment of costs and file their 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 be vacated.

14. Respondents 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

05.08.2024
Rimpal

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