



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

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**CR-4921-2024 (O&M)
Decided on: 03.09.2024**

Sukhjinder Singh

...Petitioner

Versus

Prem Singh and another

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Rakesh Nagpal, Advocate
for the petitioner.

RITU TAGORE, J.

1. Challenge in this revision petition, filed under Article 227 of the Constitution of India, is to the order dated 01.08.2024 (Annexure P-3), whereby defence of the petitioner-defendant No.1, has been struck off by the learned Civil Judge (Junior Division), Patiala, in a Civil Suit bearing No.1487-2019 captioned as 'Prem Singh Vs. Sukhjinder Singh and another'.

2. Considering the limited prayer made in this revision and the nature of the order, which is being passed herein below, this Court deems it unnecessary to issue notices to respondents and dispenses with, at this stage.

3. Learned counsel submits that although there has been a delay in filing the written statement within the prescribed period, however, same was not intentional on the part of the petitioner-defendant No.1. Since the petitioner-defendant No.1 had gone abroad and his mother in whose favour he had executed a general power of attorney also could not contact the



counsel well in time being an old lady, led to non-filing of the written statement within the statutory period. It is submitted that the order of striking of defence is unduly harsh as it precludes the petitioner-defendant No.1 from filing his written statement and from adequately defending his case. Learned counsel states that the written statement is ready and undertakes to file it on the date of hearing fixed before the learned trial Court on 20.09.2024 if afforded an opportunity.

4. A perusal of the record shows that the petitioner-defendant No.1 was granted five opportunities to file the written statement. However, he did not avail himself of these opportunities. On this account, this Court does not find any impropriety with the order passed by the Court below as such. But it is a trite law that rules of procedure are the handmaid of justice. In an adversarial system, no party should ordinarily 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."

5. Further, the rights of the parties should be adjudicated on the merits of the controversy, rather than being thwarted by rigid technicalities.

Additionally, the learned counsel on behalf of the petitioner-defendant No.1



undertakes to file the written statement in one effective opportunity. Furthermore, it is also an established practice of law that the delay can always be rectified by imposing costs.

6. As such, in these circumstances to do complete justice between the parties, I believe that one effective opportunity be granted to the petitioner-defendant No.1 to file his written statement before the learned trial Court enabling him to put forth his stand before the learned Court to the assertions and allegations raised by the respondent No.1-plaintiff against him. Accordingly, impugned order dated 01.08.2024 (Annexure P-3) is set aside, subject to payment of Rs.25,000/- as costs payable by the petitioner-defendant No.1 to respondent No.1-plaintiff.

7. Petitioner-defendant No.1 is 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 his written statement on the date fixed.

8. It is made clear that in the case of default, this order shall automatically be vacated.

9. Respondent No.1-plaintiff if not satisfied with this order, may move an application for recalling of this order within 30 days from the date of this order.

10. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

03.09.2024
Rimpal

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