

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

127

CR-5507-2023 (O&M)

Date of decision:16.01.2024

Parveen Devi

... Petitioner

Vs.

Mahinder Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Naresh Kumar Ganga, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by petitioner/defendant No.1 against the order dated 02.08.2023 passed by the Additional Civil Judge (Sr. Division), Sirsa, vide which the evidence of the petitioner/defendant was closed by order.

2. A suit for declaration was filed to the effect that the alleged sale deed No.1057 dated 16.05.2016 executed by defendant No.1 in favour of defendant No.2 regarding land situated at Village Chauburja, District Sirsa as detailed in head note of the plaint is null and void and is liable to be set aside/cancelled and also relief of permanent injunction to restrain defendant No.2 to further sell, alienate, transfer, mortgage or creating any charge over the suit land, on the basis of oral or documentary evidence.

3. During the pendency of the suit, effective opportunities were provided to defendants No.1, 3 and 4 to file written statement but they failed to file any written statement. Then the trial Court vide the impugned order dated 02.08.2023 struck off the defence of the defendants No.1, 3 and 4.

Hence, the present revision petition has been filed by petitioner/defendant No.1 before this Court.

4. It has been contended by learned counsel for the petitioner that a liberal approach was to be made by the trial Court as technicalities of law should not be permitted to hamper the Courts to administer justice to the parties. He has further contended that in the interest of justice, one opportunity is be provided to the petitioner for filing of her written statement.

5. I have heard learned counsel for the petitioner at length and have perused the pleadings on record.

6. From the perusal of the impugned order, it transpires that request for adjournment for filing of the written statement as well as reply to the stay application by defendants No.1, 3 and 4 was allowed by the trial Court subject to payment of cost of Rs.1000/- to be paid to DLSA, Sirsa and last opportunity was granted for the same. But neither such cost was paid nor written statement and reply to the stay application was filed and further adjournment was requested. It has been further mentioned in the impugned order that defendant No.1 appeared before the trial Court for the first time on 17.03.2020 in person and Power of Attorney on her behalf was filed on 28.01.2021. Since then despite of availing number of opportunities including the last opportunity, defendants No.1, 3 and 4 failed to file their written statement and reply to the stay application and in these circumstances, defence of defendants No.1, 3 and 4 was struck off by the trial Court. It has been held in a catena of judgments that Proviso to Rule 1(8) CPC is directory and not mandatory in nature and in the justified circumstances, the

time limit provided under statute for filing of the written statement in civil proceedings can be extended by the Court. Moreover, hyper technical approach is not to be adopted by the Court as procedural laws are meant for imparting substantial justice and not to obstruct the judicial proceedings. So, in the instant case also, though there is no infirmity in the impugned order, yet it will be appropriate, if in the interest of justice, one effective opportunity is given to the petitioner to file her written statement. The other party can be well compensated with costs. Therefore, the impugned order is set aside. The trial Court will grant one effective opportunity to the petitioner to file her written statement subject to payment of costs of Rs.8000/- to the respondents.

7. Revision petition is allowed in the aforesaid terms.

(SUKHVINDER KAUR)
JUDGE

16.01.2024
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |