

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****128****CR-5756-2024 (O&M)****Date of Decision : 01.10.2024**

Fateh Chand

....Petitioner

VERSUS

Sanjay Kumar and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. N.S. Gill, Advocate for the petitioner.

Mr. Munish Gupta, Advocate for respondent No.1-caveator.

ALKA SARIN, J. (Oral)

1. Present revision petition has been preferred by the defendant No.12 challenging the order dated 18.04.2022 whereby the defense of the defendant No.12-petitioner was struck off.

2 Learned counsel for the defendant No.12-petitioner would contend that after passing of the order dated 18.04.2022, an application was filed by defendant No.4 (respondent No.5 herein) for recalling the order dated 18.04.2022, which was decided on 25.01.2023, against which a revision petition being CR-3974-2024 has been preferred. In the said revision petition it has been observed by this Court that the counsel for the plaintiff-respondent No.1 therein had made a statement before the Trial Court that plaintiff-respondent No.1 would have no objection if an opportunity is granted to the petitioner therein (respondent No.5 herein) to file a written statement subject to heavy costs. Learned counsel for the petitioner has further contended that given one opportunity defendant No.12-

petitioner herein would file his written statement and that he is also willing to compensate the plaintiff-respondent No.1 herein by way of heavy costs.

3. Mr. Munish Gupta, Advocate, counsel appearing on behalf of the plaintiff-respondent No.1 would contend that the written statement was not filed despite numerous opportunities and that on 18.04.2022 the impugned order was passed. However, defendant No.12-petitioner herein chose not to file any application for recall of the said order. He, however, has candidly admitted that in the application filed by defendant No.4 (respondent No.5 herein) for recall of the order dated 18.04.2022 he had made a statement that he would have no objection if defendant No.4 was permitted to file her written statement subject to heavy costs.

4. Heard.

5. Hon'ble Supreme Court in the case of **Desh Raj vs. Balkishan (D) through proposed LR Ms. Rohini [(2020) RCR (Civil) 807]** has held the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 to be directory in nature in the case of non-commercial suits. Admittedly, in the present case the defense of two defendants i.e. defendant No.4 and defendant No.12 (petitioner herein) was struck off vide order dated 18.04.2022. Defendant No.4 filed an application for recall of the said order, which was dismissed on 25.01.2023 (Annexure P-4). Against the said order a revision petition being CR-3974-2024 was filed wherein it was noticed on 18.07.2024 that the counsel for the plaintiff had made a statement before the Trial Court that he would have no objection if an opportunity was granted to the defendant No.4 (petitioner therein) to file her written statement subject to

heavy costs. Learned counsel for the plaintiff-respondent No.1 has candidly admitted that the statement was infact made.

6. In view of the above, this Court deems it fit to allow the present revision petition. One opportunity is granted to defendant No.12-petitioner herein to file the written statement subject to payment of Rs.50,000/- as costs to be paid to the plaintiff-respondent No.1 keeping in view the fact that there has been a long period of silence from 18.04.2022 till date. It is made clear that payment of costs to the plaintiff-respondent No.1 shall be a condition precedent.

7. Present revision petition is disposed off in the above terms. Pending applications, if any, also stand disposed off.

01.10.2024
jk

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO