

2024:PHHC:138697



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

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CR-5724-2024 (O&M)

Date of decision: 23.10.2024

Braham Dutt

...Petitioner

Versus

Dharambir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Vaibhav Parashar, Advocate for the petitioner.

VIKAS SURI, J.

1. This revision petition has been filed by the plaintiff-petitioner (Braham Dutt) under Article 227 of the Constitution of India for setting aside order dated 29.07.2024 passed by learned Civil Judge (Junior Division), Faridabad, whereby the application moved by him under Order 8 Rule 1 CPC for striking off the defence of the defendants, has been dismissed.

2. Brief facts of the case are that, plaintiff filed a suit for partition with consequential relief of permanent injunction and upon notice thereof, respondent-defendant Nos.1 to 4 put in appearance on 15.11.2023. It has been averred that written statement was filed on 16.05.2024, i.e. after a period of 180 days. Accordingly, an application was filed for striking off the defence of the defendants for not having filed the written statement within the stipulated time. Upon notice of the



application, reply was filed.

2.1 Concededly, the written statement has been filed on 16.05.2024. Accordingly, the trial Court considering the contentions advanced on behalf of both the parties, dismissed the application vide impugned order dated 29.07.2024.

3. Aggrieved by the said order, the petitioner has assailed it through the present petition.

4. I have heard learned counsel for the petitioner and perused the case file with his able assistance.

5. Undisputedly, as noticed in the impugned order, respondent-defendant Nos.1 to 4 put in appearance in the suit on 15.11.2023 and the written statement on their behalf has been filed on 16.05.2024. Perusal of the impugned order shows that in the reply filed to application for striking off the defence, it has been pleaded that though the trial was adjourned from 12.08.2023 to 23.01.2024 for filing written statement, in the meanwhile, counsel for the defendant became seriously ill and was bedridden and thus, the written statement could not be filed even on 18.04.2024.

6. The factum of illness of the counsel for the defendant-respondent is not under challenge before this Court. The only argument raised is that the written statement ought not to have been accepted after the period stipulated under Order 8 Rule 1 CPC. It is not disputed that



the present case is not a commercial suit and therefore, in view of the law settled in *Salem Bar Association vs. Union of India*, (2005) 6 SCC 344, wherein it has been held that the provisions contained in Order 8 Rule 1 CPC are directory in nature. It has also been further held in *Bharat Kalra vs. Raj Krishan Chhabra*, 2022 SCC OnLine SC 613, while relying upon the earlier judgment in *Kailash vs. Nanko and others*, (2005) 4 SCC 480, that the provisions of Order 8 Rule 1 CPC are not mandatory and the delay in filing the written statement could very well be compensated with costs but denying the benefit of filing the written statement is unreasonable.

7. In the present case, the trial Court has exercised its judicial discretion, in permitting filing of the written statement without payment of costs. The said discretion appears to have been exercised in favour of the respondent-defendants keeping in view that delay was on account of the ill health of the counsel, which was not within their control.

8. Learned counsel for the petitioner is not in a position to rebut the aforesaid fact and has also not been able to point out any perversity in the impugned order or to show as to what prejudice is caused to him.

9. In view of the aforesaid, no ground is made out warranting interference in the impugned order nor does the same suffer from any jurisdictional error.



10. Resultantly, the present petition being bereft of merit, is dismissed.

October 23, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No