



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

124

CR-6051-2024 (O&M)

Date of Decision: 21.10.2024

Som Nath and others

...Petitioners

Versus

Kimti Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Rajesh Duhan, Advocate,
for the petitioners.

VIKAS SURI, J.

1. This revision petition preferred by the petitioner-defendants under Article 227 of the Constitution of India assails order dated 02.09.2024, whereby the defence of defendant Nos.1 to 5 has been struck off by Court order for having failed to file written statement despite the opportunities having been afforded.
2. The facts in brief are that the petitioners are arrayed as defendants in a suit for permanent injunction restraining them from interfering in the peaceful possession of the plaintiff-respondent over two shops situated within *lal dora* of village Ahar, Tehsil Israna, District Panipat, i.e. the suit property.
3. Learned counsel for the petitioners submits that the defence of the petitioners has been struck off even before the outer period stipulated under Order 8 Rule 1 CPC has lapsed. The petitioners seek only one



opportunity for filing their written statement.

4. Heard learned counsel for the petitioners and perused the case file with his able assistance.

5. Perusal of the paper book shows that notice of the suit filed by the respondent-plaintiff was issued vide order dated 06.06.2024 for 11.06.2024. The defendants put in appearance through counsel on the said hearing and the matter was adjourned to 24.07.2024 for filing written statement. On the said date, the proceedings were deferred to 21.08.2024, which were further adjourned to 02.09.2024. Vide orders dated 24.07.2024 and 21.08.2024, last opportunity for filing written statement was provided. Having failed to file the written statement in terms of the aforesaid orders, vide impugned order dated 02.09.2024, defence of defendant Nos.1 to 5 was struck off by Court order. It was further ordered that the defendant-petitioners would be precluded from filing written statement and the proceedings were adjourned for evidence of the plaintiff. As per the *zimni* orders produced in Court by learned counsel for the petitioners, no evidence has been led by the plaintiff as yet and the matter is pending for 19.12.2024.

6. No doubt, the provisions of Order 8 Rule 1 CPC are ordinarily to be adhered to but the trial Court could have permitted one more opportunity to file the written statement, keeping in view that a drastic order of striking off the defence was being passed even before expiry of maximum period stipulated under Order 8 Rule 1 CPC.

7. It is notable that the provisions contained in Order 8 Rule 1



CPC have been held to be directory in nature by the Apex Court in ***Salem Bar Association vs. Union of India, (2005) 6 SCC 344***. It is well settled that the Court should not be too harsh to strike off the defence of the defendants at very early stage. The rules of procedure are the handmaids of justice and cannot be allowed to defeat substantial justice between the parties.

8. It has also been held in the case of ***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 provision of Order 8 Rule 1 CPC is not mandatory and the delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing the written statement is unreasonable.

9. In view the law settled by the Apex Court and in order to do complete justice between the parties, the defendant-petitioners are liable to be granted one more opportunity to file their written statement, failing which they would suffer irreparable loss that in turn would result in miscarriage of justice. It is well settled that for complete adjudication between the parties and to balance the scales of inconvenience, it is expedient that there is a contested trial, instead of one side being handicapped on account of striking off the defence.

10. In the totality of circumstances and peculiar facts of the present case, the instant petition is being disposed of without issuing notice to the respondents, to avoid any further delay in the proceedings as well as



additional expenses that the plaintiff-respondents would have to incur to defend the present proceedings.

11. Accordingly, the impugned order dated 02.09.2024 is set aside and the instant revision petition is disposed of by granting one opportunity to the defendant-petitioners to file their written statement on or before the date already fixed before the trial Court. It is, however, made clear that in the event of default by the petitioners in filing the written statement/reply to stay application, no further opportunity is liable to be granted for the said purpose and their defence shall be deemed to be struck off.

12. This revision petition is disposed of in the aforesaid terms.

13. Pending applications, if any, also stand disposed of.

October 21, 2024
harish

(VIKAS SURI)
JUDGE

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