



CR-3103-2024 (O&M) -1-

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CR-3103-2024 (O&M)
Date of decision:20.05.2024

Ritu Bala

... Petitioner

Vs.

Hardeep Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. J.S. Warring, Advocate for the petitioner.

...

SUKHVINDER KAUR, J.

1. The instant revision petition has been filed by petitioner/defendant No.1 against the order dated 08.08.2022 (Annexure P-3) passed by the Civil Judge, Jr. Division, Bathinda, vide which the defence of the petitioner/defendants was struck off due to non filing of written statement and subsequent order dated 12.09.2023 (Annexure P-5), whereby application filed by the petitioner for recalling of order dated 08.08.2022 was dismissed.

2. Brief facts for adjudication of the present revision petition are that respondent No.1/plaintiff filed a suit for mandatory injunction directing defendant No.1 to remove wall constructed on common wall of House No.132 of the plaintiff and House No.133 of the defendant No.1 and also to demolish and remove room constructed on first floor of Porch portion, on above said common wall, illegally, against facts, in violation of site plan and also without consent of the plaintiff which has been



causing nuisance to the plaintiff i.e. the construction has badly affected light and air to the property of the plaintiff, especially kitchen of the plaintiff., for directing defendant No.1 to remove blockage of sewer pipe line and to get the same rectified/restored to its earlier position, for drainage of surplus water from the house of the plaintiff which has been illegally blocked by defendant No.1 while raising the said illegal construction, for directing defendant No.2 to take action against defendant No.1 and to get the above said illegal constructions demolished and removed, constructed by defendant No.1 in front portion/porch portion of Villa No.133, illegally, against facts and in violation of the site plan which is causing nuisance to the plaintiff and further for directing defendant No.3 to get illegal construction raised by defendant No.1 in front of her house and common wall in violation of Rules and against sanctioned site plan, demolished and removed and for restraining defendant No.1 from raising further construction in front of her building No.133, Ganpati Enclave, Bathinda.

3. Upon notice of the said suit, petitioner appeared through his counsel and when he appeared before the trial Court to file his written statement, he came to know that defence of the petitioner has been struck off by the trial Court on 08.08.2023. Aggrieved against the said order, the petitioner moved an application for recalling of the said order which has been dismissed by the trial Court vide order dated 12.09.2023 (Annexure P-5). Hence, aggrieved against the same, the petitioner/defendant No.1 has knocked the doors of this Court by way of filing of the present



revision petition.

4. Learned counsel for the petitioner has contended that clerk of the counsel appearing for the petitioner has noted down the wrong date and due to his inadvertence, the petitioner could not file his written statement. He has argued that it is a settled proposition of law that every case should be decided on merits and in the interest of justice, equal opportunity must be given to all the necessary parties before passing any judgment. In case the petitioner is not allowed to file his written statement, it will cause irreparable loss to him which cannot be compensated in any manner. He has submitted that non-filing of the written statement was neither willful nor intentional and one effective opportunity may be provided to the petitioner for filing the 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 record, it transpires that defendants No.1 & 2 have appeared through their counsel on 28.02.2022 and since then the case was pending for filing written statement. It is also mentioned in the impugned order that despite availing several opportunities and imposition of costs, the defendants/petitioner failed to file written statement. Even the statutory period of 90 days for filing of the written statement has also elapsed.

7. 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.

8. Keeping in view the above, though there is no infirmity in the impugned order as there is considerable delay in filing the written statement, yet it will be appropriate, if in the interest of justice, one effective opportunity is granted to the petitioner to file her written statement to defend her case. The other party can be well compensated with costs. Therefore, the trial Court is directed to grant one effective opportunity to the petitioner to file her written statement subject to payment of costs of Rs.15,000/- to be paid to the respondents. Accordingly, the impugned order dated 08.08.2022 (Annexure P-3) is set aside and the revision petition is allowed in the aforesaid terms.

9. Pending application(s), if any, shall also stand disposed of.

20.05.2024

harjeet

(SUKHVINDER KAUR)

JUDGE

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No