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

CR-6075-2024

Date of decision: 21.10.2024

Renu Thakur

...Petitioner

Versus

Manjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rahul Jaswal, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 16.01.2024 (Annexure P-6) passed by the Civil Judge (Junior Division), Dasuya, District Hoshiarpur in CS/678/2022 dated 25.11.2022 whereby the defence of the petitioner has been struck off.

2. Learned counsel for the petitioner has submitted that the petitioner, in fact, had signed the documents and also the written statement which were prepared by the earlier counsel but the counsel did not file the said written statement for the reasons best known to him and when the petitioner learnt about the said fact, she confronted the earlier counsel but when he gave no satisfactory reply, the petitioner changed the counsel and had filed an application for recalling of the order which had also been



dismissed on 12.09.2024. It is further submitted that it was on account of mistake of the earlier counsel that the written statement was not filed and has prayed that the impugned order be set aside and the petitioner be granted opportunity to file reply.

3. This Court has heard learned counsel for the petitioner and has perused the paper book.

4. The suit was filed by the respondent for recovery of Rs.7,68,103/- along with interest at the rate of 18% per annum. On 04.10.2023, counsel for the petitioner-defendant had appeared and the matter was adjourned to 03.11.2023 for filing reply. On 03.11.2023, written statement was not filed and the Court had passed the following order:-

“Written statement not filed. On request of Ld. Counsel for defendant, case stands adjourned to 07.12.2023 for filing the written statement.

Date of Order: 03.11.2023”

5. Thereafter, on 07.12.2023, again written statement was not filed and the Court had passed the following order:-

“Present: Sh.P.S.Chanota Adv counsel for plaintiff.

Sh.S.S.Gill Adv counsel for defendant.

Written statement not filed. Same be filed on 04.01.2024, being last opportunity.

Date of Order: 07.12.2023”

6. A perusal of the order dated 07.12.2023 would show that the last opportunity was granted to file written statement. Thereafter, again on 04.01.2024, neither counsel appeared nor written statement was filed and the matter was adjourned to 16.01.2024 for filing the written statement



again being the final opportunity. The said order dated 04.01.2024 is reproduced hereinbelow:-

“Present: Ld. Proxy counsel for the parties.

Regular counsels are not appearing before court as the Bar Association, Dasuya has observed “No Work Day” for today i.e. 04.01.2024.

Today the case was fixed for filing written statement. Perusal of the file shows that defendant was appeared through counsel Sh.S.S.Gill Adv on 04.10.2023. Since, then defendant did not file written statement. The period of 90 days as per CPC has already been elapsed. However, in the interest of justice, case stands adjourned to 16.01.2024 for filing written statement, being final opportunity.

Date of Order: 04.01.2024”

7. Even on 16.01.2024, in spite of two last opportunities, the written statement was not filed and accordingly, defence of the petitioner was struck off. The order dated 16.01.2024 is reproduced hereinbelow:-

“Present: Sh.P.S.Chanota Adv counsel for plaintiff.

Defence of defendant struck off.

Written statement on behalf of defendant not filed.
Perusal of the file reveals that the defendant has availed numerous opportunities including the last opportunities to file the written statement, but has failed to file the same. This Court finds no justification in further adjourning the present case for filing the written statement. Accordingly, the defence of defendant struck off. Accordingly, matter is adjourned to 27.02.2024 for plaintiff evidence.

Date of Order: 16.01.2024”

8. Instead of challenging the said order immediately before this Court, the respondent had moved an application for recalling of the



abovesaid order dated 16.01.2024 and in the said application, which did not refer to any provision of law, no plea with respect to there being mistake of earlier counsel was raised as is sought to be raised before this Court. The said application was dismissed vide order dated 12.09.2024 on the ground that the said application was not legally maintainable and after passing of the order dated 16.01.2024, considerable time has elapsed. On a query put by this Court, learned counsel for the petitioner has very fairly submitted that the evidence of the respondent-plaintiff have been closed and the matter is now fixed for 24.10.2024 for consideration and arguments. Order dated 12.09.2024 has not been challenged.

9. A perusal of the abovesaid zimni orders would show that in spite of several opportunities having been granted including two last opportunities, the petitioner did not file written statement leaving no alternate for the trial Court except to pass the impugned order dated 16.01.2024. Even thereafter, appropriate remedy was not availed and further time has been lost in pursuing the application (Annexure P-7) as a result of which the case is now listed for arguments. The plea sought to be raised before this Court with respect to mistake of the earlier counsel is not mentioned in the application for recalling (Annexure P-7). Setting aside the impugned order dated 16.01.2024 at this stage would cause irreparable loss to the respondent and would result in de novo trial, inasmuch as the pleadings would have to be completed and then the witnesses which the respondent have already examined will have to be recalled and then the petitioner would lead her defence evidence. The suit has been filed by the respondent for recovery and apparently, an attempt has been made to delay

the proceedings.

10. Keeping in view the abovesaid facts and circumstances, the impugned order dated 16.01.2024 (Annexure P-6) is legal and in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

21.10.2024
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No