



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

128

CR-6168-2024

Date of Decision: 23.10.2024

Yamuna Dass and others

...Petitioners

Versus

Rahul

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Arvind Mittal, Advocate, for the petitioners.

VIKAS SURI, J.

1. This revision petition under Article 227 of the Constitution of India has been filed to set aside order dated 07.12.2023 (Annexure P-1) passed by learned Civil Judge (Senior Division), Jalandhar, whereby defence of the petitioner-defendants has been struck off by Court order, for having failed to file written statement despite effective opportunities having been afforded.

2. The facts in brief are that respondent-plaintiff filed a suit for declaration, permanent injunction, mandatory injunction and rendition of accounts. Upon notice, the defendants put in appearance through counsel on 21.02.2023 and the proceedings were deferred to 26.05.2023 for filing written statement and reply to stay application. On the said hearing, proceedings were further deferred as the District Bar Association was



observing 'no work day'. After affording several opportunities including last opportunity to file the written statement and petitioners having failed to do so, their defence was struck off vide order dated 07.12.2023 (Annexure P-1).

3. Learned counsel for the petitioners submits that the present suit is not a commercial suit and the provisions contained under Order 8 Rule 1 CPC have been held to be directory in nature. Reliance is placed upon ***Salem Bar Association vs. Union of India, (2005) 6 SCC 344***. The defence of the petitioners has been struck off for not having filed the written statement within the statutory period of 90 days. Learned counsel for the petitioner, thus, prays that the petitioners seek only one opportunity for filing their written statement and the next date of hearing before the trial Court is 29.10.2024.

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

5. Undisputedly, defendants had put in appearance on 21.02.2023 and were afforded four effective opportunities for filing the written statement. It is further noticed that costs were also imposed upon the defendants vide order dated 21.11.2023 and it was on the next hearing thereafter, the defence of the petitioners was ordered to be struck off.

6. The Hon'ble Supreme Court of India 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, held that that provision of Order 8 Rule 1 CPC is 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, apparently ratio of the aforesaid authoritative judicial pronouncement was followed by the Court below and final opportunity to file written statement and reply to stay application was afforded subject to costs, which the petitioners failed to avail. It is also settled law that the Court should not be too harsh to strike off the defence of the defendants at very early stage. For complete adjudication between the parties, it is imperative that the respective stand of both the parties is before the Court. The rules of procedure are handmaids of justice and cannot be allowed to defeat substantial justice between the parties.

8. In the light of the above discussion and in order to do complete justice between the parties, the defendant-petitioners are liable to be granted one 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 and to balance the scales of convenience between the parties, it is expedient that there is a contested trial.

9. In the peculiar facts of the present case, instant petition is being disposed of without issuing notice to the respondent to avoid any further delay in the proceedings as well as additional expenses that the plaintiff-respondent would have to incur to defend the present proceedings.

10. Accordingly, the present petition is allowed, the impugned



order dated 07.12.2023 (Annexure P-1) is set aside subject to payment of costs of Rs.20,000/-, to be paid to the plaintiff-respondent and one opportunity is granted to the defendant-petitioners to file their written statement/reply to stay application on the date already fixed before the trial Court. However, it shall be open to the trial Court to accept the written statement on the hearing immediately following the one already fixed, in case the matter is not taken up for hearing on the date already fixed, i.e. 29.10.2024. It is further made clear that in the event of default by the petitioners in paying the costs, filing the written statement/reply to stay application, as aforesaid, no further opportunity is liable to be granted and their defence shall be deemed to be struck off.

- 11. The revision petition is disposed of in the above terms.
- 12. Pending applications, if any, also stand disposed of.

October 23, 2024
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(VIKAS SURI)
JUDGE

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