



219-Urgent

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

**Civil Revision No. 6138 of 2024 (O&M)
Date of Decision: 22.10.2024**

Ankur Hastir

..... Petitioner

Versus

Uday Gupta and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Shivani, Advocate
for the petitioner-defendant No. 1.

HARKESH MANUJA, J.

Petitioner-defendant No. 1, by way of present revision petition, seeks setting aside of an order dated 12.09.2024 passed by the learned Civil Judge (Junior Division)-9, Jalandhar (**hereinafter to be referred as “trial Court”**), in Civil Suit No. 78 of 2023, titled “***Uday Gupta Versus Ankur Hastir etc.***”, whereby his defence was struck off due to non-filing of the written statement.

[2] Facts leading to the present case are that the respondent No. 1-plaintiff filed a suit for recovery of Rs. 5,50,987/- as arrears of rent for the period from 01.12.2017 to August 2022. Upon notice, petitioner did not appear; proceeded ex parte on 07.07.2023; thereafter moved an application for setting aside the ex parte order, which was set aside by the trial Court, while imposing costs of Rs. 500/- upon him; however, despite having been granted sufficient opportunities, no written statement was filed and resultantly, his defence was ordered to be struck off vide order dated

12.09.2024.

[3] Impugning the aforesaid order dated 12.09.2024 passed by the trial Court, learned counsel for the petitioner submits that in the absence of any defence being put-forth by way of filing written statement, the petitioner will not be able to defend the suit in an effective manner which definitely will cause serious prejudice to his rights therein.

[4] After hearing learned counsel for petitioner and having gone through the paper-book as well as the zimni orders passed by the trial Court, which have been annexed with the petition, I find substance in the submissions made on behalf of the petitioner.

[5] In the humble opinion of this Court, in case the impugned order is allowed to stand and the petitioner is deprived of his right to file written statement, he will not be able to put-forth his defence to the case set up by the respondent-plaintiff in the suit. Though, there appears to be lack of due diligence on the part of petitioner while contesting the suit, however, considering the fact that ever since the passing of impugned order, the proceedings in the suit have not moved further, as such, it would be in the interest of justice to grant one effective opportunity to the petitioner, so as to file written statement in order to protect his substantial rights involved in the suit.

[6] Even the Hon'ble Supreme Court in ***“Kailash Vs. Nanhku and ors.”***, 2005 (2) RCR (Civil) 379, while considering the provisions of Order VIII Rule 1 CPC, has held that the same being part of procedural law and hence directory in nature. Still further, keeping in view the substantial justice, the Hon'ble Supreme Court under somewhat similar circumstances,

in “*Siddalingayya Vs. Gurulingappa and ors.*”, 2018 (1) RCR (Civil) 543, upheld the opportunity of filing written statement granted by the High Court. Even otherwise, upholding of the impugned order will cause serious prejudice to the rights of petitioner as he will not be able to contest the case set up by the respondents.

[7] Accordingly by adopting a pragmatic approach; rather than being hyper-technical, the revision petition is **allowed**. Impugned order dated 12.09.2024 passed by the trial Court, is ordered to be set aside, **thereby granting one effective opportunity to the petitioner** so as to file his written statement on the date fixed before the trial Court, i.e. 06.11.2024.

[8] Keeping in view the nature of proceedings, the present petition is being decided without issuing notice to the respondent-plaintiff, lest it may delay the progress of suit instituted at his instance and may also burden him with unnecessary costs towards litigation expenses.

[9] It is made clear that in case, the respondent-plaintiff find any mis-statement of fact on the part of petitioner, he would be at liberty to approach this Court by moving an appropriate application in this regard.

[10] The aforesaid order shall be subject to payment of costs of Rs.10,000/-, which shall be deposited by the petitioner with the trial Court on the date fixed, to be disbursed in favour of respondent-plaintiff.

October 22, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No