

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

CR No.6750 of 2023

Date of Decision: 22.02.2024

Dharamchand B Solanki (now deceased) through his LR

.....Revisionist-Petitioner.

Versus

ITC Limited and another

.....Respondents.

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Piyush Aggarwal, Advocate
 for the LR of the revisionist-petitioner.

MEENAKSHI I. MEHTA, J. (Oral)

By way of the instant revision-petition, the petitioner-LR of defendant No.2 (here-in-after to be referred as 'the petitioner') has assailed the order (Annexure P-1) passed by learned Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram (for short 'the Commercial Court') on 28.08.2023 in *Civil Suit (Comm) No.43 of 2022* titled as '*ITC Limited Vs. M/s Royal Creations and another*', dismissing the application moved by him under Order 7 Rule 11 CPC for seeking the rejection of the plaint and also the order (Annexure P-2) handed down by the said Court in the above-mentioned Suit on the same day, whereby his right to defend has been struck-off, while observing that he had failed to file the written-statement well in time.

2. I have heard learned counsel for the petitioner-LR of defendant No.2 in the present revision-petition, at the preliminary stage and have also perused the file carefully.

3. However, during the course of arguments, learned counsel for the petitioner has sought the permission to partly withdraw this revision-petition to the extent of the challenge as laid by the petitioner to the order Annexure P-1 regarding the dismissal of the application, moved by him for seeking the rejection of the plaint, while submitting that the petitioner will take up/raise all the pleas, as may be permissible to him under law, before the Commercial Court itself. It being so, the instant petition stands partly dismissed for having been withdrawn, so far as it pertains to the prayer for setting-aside the order Annexure P-1.

4. As regards order Annexure P-2, though the petitioner failed to file his written-statement in the afore-referred Suit well in time but keeping in view the fact that in case, he is deprived of his valuable right to file his written-statement to defend himself in the above-said Suit, he shall suffer an irreparable loss which may further lead to/result in the mis-carriage of justice, this Court is of the considered opinion that it would be in the fitness of the things and the ends of justice will also be best served if the petitioner is allowed to file his written-statement but subject to the payment of cost to respondent No.1-plaintiff-Firm.

5. Resultantly, without issuing the notice to respondent No.1-plaintiff-Firm so as to avoid any further delay in the adjudication of the afore-mentioned Civil Suit and also to avert the expenses that it (plaintiff-Firm) may have to incur to defend in this revision-petition, the impugned order Annexure P-2 is, hereby, set-aside and the revision-petition in hand is partly disposed of with a direction to the Commercial Court to afford only one opportunity to the petitioner to file his written-statement in the above-said Civil Suit but the payment of cost of Rs.40,000/- to respondent No.1-

plaintiff-Firm shall be a condition precedent for doing so and in the case of default on the part of the petitioner in filing the written-statement or in the payment of the cost on 26.02.2024, i.e the next date as stated to have been scheduled by the Commercial Court for hearing in the afore-referred Suit, he shall not be entitled to any further opportunity for the said purpose.

6. It is also clarified here that in the eventuality of respondent No.1-plaintiff-Firm feeling aggrieved by this order, it shall be at liberty to move an appropriate application to contest the present revision-petition.

February 22, 2024

Yag Dutt

**(MEENAKSHI I. MEHTA)
JUDGE**

Whether speaking/reasoned: Yes
Whether Reportable: No