

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

128

CR-7191-2023 (O&M)
Decided on: 16.01.2024

Jaspal Singh

...Petitioner

Versus

Manjit Singh Arora @ Bain

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. N. K. Manchanda, Advocate
for the petitioner.

RITU TAGORE, J.(Oral)

1. Challenge in this revision is to the order dated 10.08.2022 (Annexure P-2) passed by learned Civil Judge, Junior Division, Patiala in a case No.CS-1166 of 2021 titled ‘Manjit Singh Arora Vs. Jaspal Singh’, whereby defence of the petitioner (defendant before the learned lower Court) has been struck off and he has been estopped from filing the written statement.
2. Learned counsel for the petitioner submitted that the respondent (plaintiff before the learned lower Court) filed a suit for declaration to the effect that plaintiff is the owner in possession of the movable and immovable properties left by late Sh.Jasbir Singh @ Raghbir Singh s/o Gurbax Singh, being Class-I heir, qua the suit land situated in revenue estate Tafazalpura, Tehsil and District Patiala as per revenue record for the year 2013-2014 and for declaration that Will bearing Vasika No.965 dated

09.01.2013 propounded by petitioner (defendant) is illegal, null and void being result of fraud and fabrication, not binding upon the legal rights of the respondent (plaintiff) and is liable to be set aside; further mutation of inheritance be sanctioned in the name of the respondent (plaintiff) and for permanent injunction restraining petitioner (defendant), his agents/partymen/attorney from alienating transferring or mortgaging the suit land in any manner. Learned counsel for the petitioner further submits that upon notice petitioner engaged Mr. Inderpal Singh, Advocate at District Court, Patiala for conducting the above said suit on his behalf and disclosed relevant facts and gave documents including the registered Will dated 09.01.2013 executed in his favour regarding the suit land. The aforesaid advocate appeared on behalf of the petitioner before the trial Court and filed his Power of Attorney. The learned counsel submits that the trial Court adjourned the case for 25.11.2021 for filing written statement by the petitioner but the said advocate did not file written statement on behalf of the petitioner, neither informed him. As such, the learned trial Court vide order dated 10.08.2022 (Annexure P-2) struck off the defence of the petitioner and also did not inform him about the passing of the said order.

3. The learned counsel further submits that the petitioner made several efforts to contact his counsel several times but no satisfactory reply was given by him and he then ultimately approached his advocate personally in September, 2023 and came to know about passing of the impugned order. The advocate when confronted about the passing of the impugned order, misbehaved with the petitioner and also refused to return the papers and other relevant documents of the suit of the petitioner. The learned counsel further submits that the petitioner thereafter applied for the certified copy of

the plaint and other documents and also filed a complaint dated 19.10.2023 (Annexure P-3) against his counsel at Bar Council of Punjab and Haryana. Learned counsel urges that litigant should not be made to suffer on account of fault of his counsel.

4. It is further submitted that in the given allegations and assertions made by the respondent (plaintiff) against the petitioner, filing of written statement on behalf of the petitioner is very material. If he is prevented from filing his written statement, he shall suffer irreparable loss as the original owner of the suit land. Late Sh. Jasbir Singh @ Raghbir Singh executed a valid registered Will dated 09.01.2013 regarding the suit property in favour of the petitioner and revenue entries were accordingly entered and sanctioned in his favour. The respondent filed the suit Annexure P-1 in the year 2021 after more than 8 years of execution of Will in his favour, just to grab the suit property. The learned counsel submits that it is an established principle of law that the parties should get an opportunity to defend their case and the doors of contest should not be closed hastily for a litigant. Learned counsel submits that petitioner be granted one opportunity to file his written statement.

5. I have heard learned counsel for the petitioner and gone through the paper book.

6. Keeping in view limited prayer made by the petitioner, notice to the respondent is dispensed with.

7. As evident from the copy of plaint (Annexure P-1) placed on record, respondent (plaintiff), filed a suit for declaration to the effect that he be declared as owner in possession of the estate (detailed in the head note of

the plaint) left by late Sh.Jasbir Singh @ Raghbir Singh, being Class-I heir of the deceased. Further, to declare the Will bearing Vasika No.965 dated 09.01.2013 propounded by the petitioner as illegal, null and void being result of fraud, misrepresentation, fabrication and is not binding upon his legal rights, with additional prayer that mutation of inheritance is liable to be sanctioned in his favour and defendant, his agents/ attorney/partymen be restrained from alienating, transferring or mortgaging the suit land.

8. The text of Order 8 Rule 1, as it now stands, reads as under:-

"1. Written statement.-The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

9. A careful reading of the language of Order 8 Rule 1 reveals that it imposes an obligation on the defendant to file written statement within 30 days from the date of service of summons on him/her and within the extended time falling within 90 days. However, the provision does not explicitly take away or restrict the Court's authority to accept a written statement filed beyond the time as provided for. Further, nature of provision contained in Order 8 Rule 1 is procedural. It is not a part of the substantive law. However, the object behind amending Order 8 Rule 1 in its present form is to expedite the hearing rather than hinder the same. It is trite that all rules of procedure are the handmaid of justice. Further, in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by the express and specific language of the Statute, the provisions of Civil Procedure Code or any other procedural enactment ought not to be construed in the manner which would lead the Court helpless to meet extra-ordinary situation, in the ends of justice.

10. In ***Kailash V. Nanhku and others, (2005) 4 SCC 480***, Hon'ble the Supreme Court observed that "In spite of the time limit appointed by Rule 1, having expired, the Court is not powerless to permit a written statement being filed if the Court may require such written statement. Under Rule 10, the Court need not necessarily pronounce judgment against the defendant who failed to file written statement as required by Rule 1 or Rule 9. The Court may still make such other order in relation to the suit as it think fit."

11. In ***Bharat Kalra Vs. Raj Kishan Chabra, 2022 (3) Apex Court Judgements (SC) 598***, Hon'ble Supreme Court observed as under:-

"Admittedly, the suit for injunction filed by the plaintiff is not the one which is governed by the Commercial Courts Acts, 2015. Therefore, time limit for filing of the written statement under Order 8 Rule 1 of CPC is not mandatory in view of the judgment of this Court reported as 'Kailash V. Nanhku and others', (2005) 4 SCC 480 .

In view of aforesaid judgment, we find that delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing of the written statement is unreasonable.

Consequently, we allow the present appeal. The order passed by the High Court is set aside. The written statement already filed is taken on record."

12. As observed by me in foregoing paras of this order, the counter pleadings of the petitioner seem necessary to decide the controversy in judicious and effective manner. Denying the petitioner to file a written statement, in the given facts would certainly cause him irreparable loss. Further, deciding a dispute after hearing both the parties is deemed preferable, and a technical approach leading to closure of contesting doors should be avoided, moreso, when other party can always be compensated with costs. Furthermore, it is settled proposition of law that a litigant should not be made to suffer because of the fault of his lawyer. In this regard

reliance can be placed on authority titled “Ashok Kumar Vs. New India Assurance Company Limited’ 2023 (2) PLR 587.

13. Furthermore, the counsel on behalf of the petitioner undertakes to file the written statement in one opportunity. The delay can always be rectified or atoned by imposing costs.

14. In circumstances to do complete justice between the parties, I believe that one opportunity be granted to the petitioner to file their written statement before the learned lower Court enabling him to put forth his stand before the Court to the assertions and allegations raised by the respondent (plaintiff) against him. Accordingly, impugned order dated 10.08.2022 (Annexure P-2) is set aside, contingent upon payment of Rs.7000/- as costs payable by the petitioner (revisionist) to respondent (plaintiff).

15. Petitioner is directed to appear before learned lower Court on the due date of hearing as fixed by the Court and make the payment of costs and file their written statement on the date fixed or within 20 days thereafter.

16. Accordingly, revision petition is allowed in above terms.

17. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

16.01.2024
Rimpal

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