

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-165-2024
Decided on 12.01.2024

RANJEET SINGH

...Petitioner

Versus

JAGROOP KAUR

...Respondent

CORAM: HON’BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Bishan Dass Rana, Advocate
for the petitioner.

RITU TAGORE, J

1. The challenge in the present revision is to the order dated 04.10.2023 (Annexure P-29) passed by learned Additional Principal Judge, Family Court, Jalandhar. The Court dismissed the petitioner’s application to strike off the defence of respondent No.1 and allowed her to file written statement after a lapse of 259 days from the date of service of summons, in an arbitrary and illegal manner.

2. The learned counsel contends that the petitioner filed a petition (Annexure P-1) under Sections 7 and 25 of Guardian and Wards Act, 1890 (for short ‘the Act’) against the respondent No.1 and general public before the Family Court, Jalandhar, seeking custody of his minor son, namely ‘RS’ (his name has been screened), aged 07 years, who is currently in custody of respondent No.1, natural mother. Alongwith the main petition, he also filed an application under Section 12 of the Act for the production of the minor and for providing meeting rights with interim protection (Annexure P-2).

3. It is stated by the counsel for the petitioner that on 24.05.2022, notice was duly served on the respondent No.1 and as per provisions of Order 8 Rule 1, Code of Civil Procedure (in short as 'CPC'), she was obliged to file her reply to the petition within 30 days from the date of service of summons/notice upon her. The proviso to the Rule allows the Court to extend the period up to 90 days on sufficient reason being shown. Learned counsel submits that copies of the zimini orders Annexures P-3 to P-21 (placed on record) reveal that the Court adjourned the case multiple times, but respondent No.1 did not file the written statement purposely within the said period.

4. It is urged by learned counsel for the petitioner that on 06.01.2023, petitioner moved an application (Annexure P-23) under Order 8 Rule 1 & 10 CPC, seeking to strike off the defence of the respondent No.1 due to her failure to file written statement within the prescribed period as mandated under the provisions of Order, *ibid*. The petitioner also filed two more applications in this regard, which were later on withdrawn after dismissal of his initial application. Learned counsel for the petitioner states that learned Guardian Judge, however, failed to consider that respondent No.1 did not furnish any valid and satisfactory explanation for such inordinate delay in filing the reply. Instead, from the Court proceedings, it is explicitly evident that respondent No.1 deliberately did not file written statement in time bound manner, intending to harass the petitioner, so that he may not meet his son.

5. Learned counsel contends that provision of Order 8 Rule 1 has come up for interpretation before the Courts in numerous cases, where it was observed that nature of the provision is procedural and Court's power to accept written statement beyond 90 days cannot be doubted but at the same

time also cautioned the Courts to extend the time in exceptionally hard cases and such extension should not be made a routine matter. In support of his arguments referred to judgments of Hon'ble the Supreme Court in case titled 'ATCOM Technologies Ltd. Vs. Y. A. Chunawala and Co. & others, 2018(6) SCC 639, Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, 2005(6) SCC 344 and Desh Raj Vs. Balkishan, (2020) 2 SCC 708.

6. Learned counsel further argues that learned Guardian Judge failed to notice that underlying motive behind the belated filing of the written statement by the respondent No.1 was to intentionally delay the decision on the petition filed by the petitioner. It is submitted by the learned counsel that respondent No.1 made no request to the Court for grant of more time to file the written statement showing sufficient cause that was beyond her control. Learned Guardian Judge overlooked the facts and circumstances and passed the impugned order against the provisions of law and judicial precedents, wherein filing of the written statement beyond the prescribed limit is accepted only in exceptional cases. In the present case, respondent No.1 failed to establish exceptional circumstances justifying the late submission of the written statement beyond the prescribed period. The learned counsel, therefore, submits that impugned order should be set aside, and defence of the respondent No.1 be struck off.

7. Having considered the relief sought in the present revision, the issuance of notice to respondent No.1 seems unnecessary and is dispensed with.

8. Filing of revision petition for custody of the minor child by the petitioner under Sections 7 and 25 of Guardian and Wards Act, 1890 before the learned Guardian at Jalandhar on 20.05.2022, appearance of respondent

No.1 through her counsel on 14.09.2022 and filing of written statement by respondent No.1 on 07.02.2023 is a matter of record. The question arising in this revision is whether impugned order can be considered as arbitrary or illegal in the eyes of law.

9. The zimini orders placed on record by the petitioner also show that on some occasions, the learned Guardian Judge was on leave and petition was put up before the learned Judge on duty. Additionally, on one or two occasions, the petitioner filed applications for early hearing of the case. By following the basic principles of law, providing opportunity for the parties to contest the matter on merits; further enabling the Court to decide the case effectively and properly after having responses from the parties and further going through the proceedings that took place in the petition and reasons provided by respondent No.1 for delay in filing written statement, the learned Guardian Judge, dismissed the plea of striking off the defence of the respondent No.1 and allowed her to file her written statement in the matter.

10. 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."

11. A careful reading of the language of Order 8 Rule 1 reveals that it imposes an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him/her or within the extended time falling within 90 days. The provision does not deal with the power of the Court and also 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 the Order 8 Rule 1 in its current form is to expedite hearing rather than hinder or scuttle the same. The process of justice may be accelerated and hastened, but the fundamental fairness, which is a basic element of justice, cannot be permitted to be compromised.

12. It is trite that all rules of procedure are the handmaid of justice. 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.

13. In *State of Punjab and another Vs. Shamlal Murari and another, (1976) 1 SCC 719* held that "Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

14. 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 No.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." However, Hon'ble the Supreme Court also cautioned the Court by

observing that the extension of time shall be only by way of exception and for reasons to be recorded in writing. In no case, the defendant shall be permitted to seek extension of time when the Court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The Court may impose costs to deter the defendant from seeking any extension of time just for asking and to compensate the plaintiff for the delay and inconvenience caused to him. The aforesaid principles have also been enunciated in the law cited by learned counsel for the petitioner.

15. 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. Nankhu 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.”

16. As noticed, learned Guardian Judge, while considering all the facts and circumstances causing delay in filing the written statement on behalf of respondent No.1, permitted her to file the written statement beyond the period as prescribed under the Rule. Furthermore, learned Guardian Judge also deemed it imperative to take response from the respondent No.1, the mother-guardian, which may help and assist the Court in assessing the welfare of the minor child while deciding the custody of the minor. In my

considered opinion, counter pleadings from respondent No.1, were necessary

to decide the custody petition in a judicious and effective manner, by taking holistic view of the matter in the best interest of the child.

17. In view of the aforesaid discussion, in my considered opinion, the learned Guardian Judge committed no jurisdictional error in rejecting the petitioner’s application for striking off the defence of respondent No.1. The impugned order cannot be deemed illegal or arbitrary. Resultantly, the revision is dismissed.

18. Pending miscellaneous applications, if any, stand disposed of accordingly.

(RITU TAGORE)
JUDGE

12.01.2024
Rimpal

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