



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

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CR No.645-2025

Date of Decision: 07.02.2025

Jatinder Singh @ Jatinder Singh Brar

...Petitioner

V/s

Gurjeet Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Savreet Singh Brar, Advocate, for the petitioner.
(through video conference)

VIKRAM AGGARWAL, J (ORAL)

The present revision petition is directed against the order dated 23.12.2024 (Annexure P-1) passed by the Court of learned Addl. Civil Judge (Sr. Divn.), Faridkot, vide which the application filed by respondent No.1-plaintiff for striking off defence of the petitioner-defendant No.1 was allowed.

2. Learned counsel for the petitioner submits that a civil suit for possession by way of specific performance of agreement to sell dated 06.02.2023 was filed by respondent No.1-plaintiff on 05.06.2024, in which notice was issued for 01.07.2024. The petitioner (defendant No.1) put in appearance before the trial Court on 01.07.2024 and the same was adjourned to 09.07.2024 for filing written statement, on which date, it was again adjourned to 16.09.2024 for filing of written statement. On 16.09.2024, the written statement could not be filed and the case was adjourned to 25.11.2024. On 25.11.2024, the case was again adjourned to 23.12.2024 for filing written statement, subject to payment of costs of Rs.300/-. On the said date, though the written statement was ready, the same could not be filed and the defence



of the petitioner (defendant No.1) was struck off by allowing the application filed by respondent No.1-plaintiff.

3. Learned counsel for the petitioner submits that non-filing of the written statement, was purely unintentional and *bona fide* and that the trial Court took a hyper technical view and struck off the defence of the petitioner. He submits that one opportunity be granted to the petitioners to file the written statement. Learned counsel submits that the petitioner-defendant No.1 was willing to pay the costs imposed by the Court, but on the date fixed i.e. 23.12.2024 for filing of written statement and payment of costs, the defence was struck off. Learned counsel submits that the delay occurred on account of the fact that on 23.10.2024, respondent No.1-plaintiff along with 8 men armed with pistols, swords, *gandas* allegedly forcibly harvested the standing crop on the petitioner's land jointly owned by petitioner and his mother. Petitioner suffered financial loss due to the aforesaid act of respondent No.1-plaintiff and eventually, an FIR was registered on 17.01.2025.

4. I have considered the submissions made by learned counsel for the petitioner.

5. There would be no necessity of issuing notice to the respondents, for, in view of the nature of the order that is proposed to be passed, no prejudice would be caused to them.

6. Admittedly, notice in the suit was issued on 05.06.2024. The petitioner put in appearance before the trial Court on 01.07.2024 and the same was adjourned to 09.07.2024 for filing written statement. On the said date, the case was again adjourned to 16.09.2024 for filing of written statement. On 16.09.2024, the written statement could not be filed and the case was adjourned to 25.11.2024. On 25.11.2024, the case was again adjourned to 23.12.2024 for filing written statement, subject to costs of Rs.300/- to be paid



to the opposite party. On the said date, as per the case of the petitioner, though the written statement was ready, the same could not be filed and the defence of the petitioner (defendant No.1) was struck off by allowing the application filed by respondent No.1-plaintiff.

7. As per the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 (for short the “CPC”), the written statement is to be filed within a period of 30 days from the date of service of summons which is extendable up to 90 days. Order 8 Rule 10 lays down the procedure in case of failing to present the written statement. In ***Kailash V/s Nanhku and others, 2005(2) RCR (Civil) 379***, the Supreme Court of India opined that the amendment in Rule 8(1) CPC would not impose an embargo on the power of the Court to extend the time further, as no penal consequences as such have been provided, the provisions being in the domain of the procedural law would not, therefore, be mandatory. It was held that ordinarily the time schedule should be followed as a rule and departure therefrom would be by way of exception and that such extension of time should not be granted as a matter of routine, especially beyond a period of 90 days. It was held that in case any extension is to be granted, the same could be for the good reasons to be recorded in writing may be in brief. Subsequently, the Supreme Court of India was again seized of this issue in the case of ***R.N. Jadi V/s Subhashchandra, 2007 (3) RCR (Civil) 588***, wherein it was opined that the grant of extension of time beyond 30 days is not automatic. The Supreme Court of India held that the power of the Court has to be exercised with caution and for adequate reasons to be recorded and extension of time beyond 90 days must be granted only based on a clear satisfaction of the justification for granting such extension.



8. Reverting to the facts of the present case, no doubt after appearance before the trial Court on 01.07.2024, the written statement was not filed even on 23.12.2024. However, the petitioner has stated in petition that the delay had been occurred in filing the reply on account of pursuing remedies before the Police. In the considered opinion of this Court, the delay is not such which should disentitle the petitioner from presenting his stand before the trial Court. The reasoning given is also reasonable, though not fully justified. It has to be borne in mind that cases should be decided on merits and not on technicalities. In the considered opinion of this Court, rights of the petitioner would be gravely prejudiced if he is not permitted to file the written statement. Accordingly, this Court deems it appropriate to grant one more opportunity to the petitioner to file the written statement.

9. In view of the above, the revision petition is allowed and the order dated 23.12.2024 (Annexure P-1) passed by the Court of learned Addl. Civil Judge (Sr. Divn.), Faridkot, vide which the application filed by respondent No.1-plaintiff for striking off defence of the petitioner-defendant No.1 was allowed, is set aside. The petitioner is granted one opportunity to file his written statement on or before the next date of hearing fixed before the trial Court. This shall, however, be subject to payment of costs of Rs.15,000/, which shall be paid to the plaintiff(s).

(VIKRAM AGGARWAL)
JUDGE

February 07, 2025

vcgarg

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No