



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

120

CR-4103-2025

Date of decision: 17.07.2025

DESH RAM

...Petitioner

Versus

DHARMA AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Jagbir Singh, Advocate with
Ms. Jaskirat Kaur, Advocate
for the petitioner.

HARPREET KAUR JEEWAN, J.

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 02.12.2024 (Annexure P-1) passed by the learned Additional Civil Judge (Senior Division) Charkhi Dadri vide which the defence of the petitioner has been struck off in a Civil suit bearing No.CS-860-2018 titled 'Dharma and others vs. Mann Singh and others' in the Court of learned Additional Civil Judge (Senior Division), Charkhi Dadri.

2. Learned counsel for the petitioner submits that respondents No.1 to 3-plaintiffs filed a Civil suit seeking partition of gair mumkin plot. The petitioner was not impleaded as a party, as such, the petitioner filed an application under Order 1 Rule 10 CPC on 12.11.2018 for impleading him as a necessary party alleging that he had purchased a part of the plot in question from the husband of



plaintiff No.1 (Annexure P-3). The said application was allowed after a period of 6 years by learned Additional Civil Judge (Senior Division) vide order 06.02.2024 (Annexure P-4) and the petitioner was impleaded as respondent No.9. No doubt the matter was adjourned for filing written statement but the petitioner being an old person having age of 82 years could not file the written statement.

3. It is further contended that the petitioner is unmarried and having no child to assist him in doing day to day tasks, as such, the petitioner could not contact his counsel to know about the status of this case and could not file written statement. He further submits that the petitioner may be granted only one opportunity to file written statement.

4. I have considered the aforesaid submissions and perused the paper book.

5. Though the petitioner has filed application for impleading him as a necessary party, however, the said application was allowed after the lapse of about 6 years vide order 06.02.2024 (Annexure P-4). No doubt the petitioner was granted three opportunities to file written statement on 28.08.2024 (Annexure P-5), 04.11.2024 (Annexure P-6) and 02.12.2024 (Annexure P-1), however, keeping in view the fact that the petitioner is a senior citizen; as per memo of parties he is 82 years old and considering that he is not having family member; he is not having any child to assist him in his day today working, as such, it would be in the interest of justice, if the matter is heard on merits by the trial Court.

6. The Hon'ble Apex Court in *M/s R.N. Jadi and Brothers and others vs. Subhashchandra* in *Civil Appeal No.2925 of 2007* decided on 10.07.2007,



while interpreting the provisions of Order VIII Rule 1 observed that the nature of provisions contained in Order VIII Rule 1 CPC is procedural. It is not part of the substantive law. It was also held that all the Rules or procedures are hand-maid of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. The observations made by Hon'ble Apex Court reads as under:

"Order VIII, Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII. Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

9. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause 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 express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

10. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

11. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. jurisprudence-processual, as much as substantive. [See *Sushil Kumar Sen v. State of Bihar* (1975 Justice is the goal of (1) SCC 774]."



7. The Hon'ble Apex Court in **Kailash Vs. Nanhku and others, 2005(2) RCR (Civil) 379**, has also made the following observations, which reads as under:

"though, Order VIII Rule 1 of the CPC is part of Procedural Law and hence directory, however, keeping in view the need for expeditious trial of cases, the time schedule contained in the provisions is to be followed as a rule and the departure therefrom would be by way of exception. The Hon'ble Apex Court further observed that a prayer for extension of time made by the defendant shall not be accepted as a matter of routine and the same is to be allowed in exceptional circumstances, by recording reasons."

8. Keeping in view the nature of litigation *inter se* the parties, this Court is of the considered opinion that the petitioner should be afforded an opportunity to file a written statement and defend his *lis*. However, this should be subject to payment of costs.

9. Consequently, the present petition is allowed. The impugned order dated 02.12.2024 (Annexure P-1) passed by the learned Additional Civil Judge (Senior Division), Charkhi Dadri is set aside subject to payment of costs of Rs.5,000/- to the respondents. The petitioner-defendant shall submit written statement within a period of 3 weeks from today.

10. Since notice of motion has not been issued to the respondents, as issuance of any notice would further delay the proceedings in the suit and would also entail expenses for respondents in order to defend the present petition, as such, it is open to the respondents to move an application for recalling the present order, in case, any statement made before this Court is found to be false/incorrect.

(HARPREET KAUR JEEWAN)
JUDGE

17.07.2025
P.Bhatt

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