



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

115

CR No.7527-2024

Date of Decision: 07.01.2025

Harsh Jain and another

...Petitioners

V/s

Umang Realtech Pvt. Ltd. and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Lupil Gupta, Advocate, for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

The present revision petition has been preferred under Article 227 of the Constitution of India assailing the order dated 14.11.2024 (Annexure P-3) passed by the Court of Civil Judge (Jr. Divn.), Gurugram, vide which the defence of the petitioner (defendants No.1 and 2) was struck off on account of written statement not having been filed.

2. Learned counsel for the petitioners submits that a civil suit for declaration, mandatory injunction with consequential relief of permanent injunction and damages was filed by respondent No.1-plaintiff, in which notice was issued on 12.03.2024. The petitioners (defendants No.1 and 2) put in appearance before the trial Court on 01.08.2024 and the same was adjourned to 24.09.2024 for filing of written statement. On 24.09.2024, the written statement could not be filed and the case was adjourned to 14.11.2024. On 14.11.2024, though the written statement was ready, the same could not be filed and the defence of the petitioners (defendants No.1 and 2) was struck off.

3. Learned counsel for the petitioners submits that non-filing of the written statement, which is on record as Annexure P-2, was purely



unintentional and bona fide and that the trial Court took a hyper technical view and struck off the defence of the petitioners. He submits that one opportunity be granted to the petitioners to file the written statement.

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

5. There would be no necessity for 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 12.03.2024. However, since there was no proper service, ultimately, the petitioners put in appearance before the trial Court on 01.08.2024 when an order of status quo as regards the construction etc. was also passed. The case was adjourned to 24.09.2024 for filing of written statement, which however, could not be filed and the case was then adjourned to 14.11.2024. On 14.11.2024 also the written statement was not filed by the petitioners on account of which the defence was struck off.

7. As per 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 issuance of summons which is extendable up to 90 days. Order 8 Rule 10 lays down the procedure in case 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 01.08.2024, the written statement was not filed even on 14.11.2024. However, the petitioners have fairly admitted in petition that the written statement was not filed on account of an omission on the part of their counsel despite an undertaking having been given on 24.09.2024 that the written statement would be filed on the next date of hearing i.e. 14.11.2024. In the considered opinion of this Court, the delay is not such which should disentitle the petitioners from presenting their 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 petitioners would be gravely prejudiced if they are not permitted to file the written statement. Accordingly, this Court deems it appropriate to grant one more opportunity to the petitioners to file the written statement.

9. In view of the above, the revision petition is allowed and the order dated 14.11.2024 (Annexure P-3) passed by the learned Civil Judge (Jr.



Divn.), Gurugram, vide which the defence of the petitioners was struck off, is set aside. The petitioners are granted one opportunity to file their written statement on or before 11.02.2025 i.e. the next date of hearing before the trial Court. This shall however, be subject to payment of costs of Rs.5000/-, which shall be paid to the plaintiff.

(VIKRAM AGGARWAL)
JUDGE

January 07, 2025
vcgarg

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