

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

112

CR No.52-2025

Date of Decision: 10.01.2025

Mahender Singh

...Petitioner

V/s

Sumitra Devi

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Vishal Yadav, Advocate, for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition has been preferred under Article 227 of the Constitution of India assailing the order dated 09.05.2023 (Annexure P-2) passed by the Court of learned Additional Civil Judge (Sr. Divn.), Kosli, vide which the defence of the petitioner (defendant) was struck off on account of written statement not having been filed.

2. Learned counsel for the petitioner submits that a civil suit for permanent injunction and mandatory injunction was filed by the respondent (plaintiff) on 18.04.2022 and after notice, the petitioner (defendant) put in appearance before the trial Court on 26.04.2022 and sought time to file written statement. The case was adjourned to 04.10.2022 with the parties directed to maintain *status quo* with respect to possession over the suit property. Thereafter, the case was adjourned many times for the purpose of filing written statement. Learned counsel submits that he had prepared and signed the written statement long back and had handed over the same to the counsel for filing, but the counsel inadvertently could not file the written statement and vide the impugned order dated 09.05.2023, the defence of the petitioner was struck off. Learned counsel further submits that the suit is at

the preliminary stage and no prejudice will be caused to the respondent (plaintiff), if one opportunity is granted to the petitioner to file the written statement. 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 in striking off the defence of the petitioner. He submits that one opportunity be granted to the petitioner to file the written statement.

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

4. Admittedly, the suit was filed on 18.04.2022 and the petitioner put in appearance before the trial Court on 26.04.2022 and sought time to file the written statement. Thereafter, the suit was listed on three occasions for the purposes of filing of the written statement i.e. 04.10.2022, 13.12.2022, 21.02.2023, however, the written statement was not filed by the petitioner. Even on 09.05.2023, the date on which the defence of the petitioner was struck off, he had given no justification for seeking further time to file the written statement. A perusal of the trial Court orders shows that sufficient opportunities were granted to the petitioner to file the written statement.

5. 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.

6. There is another aspect of the matter. The impugned order was passed on 09.05.2023 and the present revision petition has been filed in December 2024 i.e. after more than 1½ years from the passing of the impugned order. Absolutely no explanation has been given for the same in the present petition. Even during the course of arguments, learned counsel for the petitioner could not justify the inordinate delay in filing the present petition. If one considers the facts of the present case and the ratio of law laid down in the judgments in the preceding paragraphs, there remains no doubt in the mind of the Court that no interference is warranted in the impugned order, especially on account of the inordinate delay caused by the petitioner in preferring the revision petition. The delay itself shows the intention of the petitioner and disentitles him from any discretionary relief.

7. In view of the above, I do not find any merit in the revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

January 10, 2025
vcgarg

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