

(1993) 08 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 2477 of 1993, Civil Miscellaneous No. 6490-C II of 1993

M/s. Tarkeshwara Hatcheries and another

APPELLANT

Vs

State Bank of India and another

RESPONDENT

Date of Decision : 27-08-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1(1)

Citation : AIR 1994 P&H 10 : (1994) 106 PLR 29

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : B.S. Bhatia, for the Appellant;

Judgement

1. The matter in hand though a petty one yet is of great importance.

2. State Bank of India instituted a suit for the recovery of a huge amount of Rs. 78,63,385.72/- against the defendants, apparently in the month of August 1991. All the three defendants seem to have been represented by their counsel. On July 16, 1993, when the impugned order was passed, defendant No. 3, made an application for adjournment of the case. Learned trial court, however, by order under revision dismissed the application and struck off the defence by, inter alia, observing as under:

"This was the last opportunity for filing of written statement. On 15-6-1993, the learned counsel for the defendant had made a statement that the written statement will be filed today i.e. on 16-7-1993 at his own responsibility and in default, the defence will be treated as struck off. The defendants are bound by the statement made by their counsel. Moreover, three last opportunities have been granted for filing of written statement. As many as nine opportunities have been granted to the defendants for filing the written statement. About a year has already lapsed after the appearance of the defendants for filing the written statement. Keeping in view the circumstances mentioned, the application moved on behalf of the defendants for adjournment of the case is hereby dismissed. The

defence is hereby struck off. To come upon 2-9-1993 for PWs."

After dismissing the application and striking off the defence, the case was posted for plaintiff's evidence. Aggrieved by the said order, the defendants have approached this Court.

3. Learned counsel for the petitioners on the first date of hearing i.e. August 25, 1993 sought time to have instructions to the effect, whether the defendants were ready and willing to furnish security for the entire amount claimed in the suit, or to deposit half of the amount, or to undertake to deposit rupees one lac towards costs in order to seek an opportunity to file written statement and the matter was adjourned for today. The learned counsel today informed the court that the petitioners were not prepared to adopt either of the three courses for which time was sought on August 25, 1993. Ultimately, learned counsel for the petitioners has been heard.

4. Learned counsel for the petitioners vehemently contended that the trial court was not justified in dismissing the application and striking off the defence and that the impugned order, if allowed to stand, would occasion a failure of justice and cause an irreparable injury to the petitioners as a huge amount is involved. The counsel, however, prayed that in the interest of justice, defendants be granted one opportunity for filing written statement.

5. I have considered the submission of the learned counsel. Rule 1 of Order VIII of the Civil P.C. provides that the defendant, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence. It is thus apparent from the reading of the above provisions that the defendants are required to present a written statement of their defence on or before the first date of hearing in a suit, or within such reasonable time as the Court may in its discretion, and in the circumstances brought before it, permit. Apparently, no time limit has been fixed in the rule aforesaid for allowing the defendants to file written statement and on the expiry of which their defence has to be struck off and, therefore, it is only the facts and circumstances of the case to be considered by the Court for exercising its discretion. Thus, as a necessary corollary, the primary question that falls for consideration here is, whether the facts and circumstances of the present case, as noticed above, make out a case for interference in the order passed by the trial Court and entitled the defendants to an opportunity for filing written statement of their defence. The answer, in my view, has to be in the negative. As noticed earlier, the suit against the defendants was filed in the month of August, 1991 and when the impugned order striking off the defence of the defendants was passed, quite a long period of two years had gone by from the date of the suit, though as per the impugned order, about a year's time had elapsed as on the date of order after the defendants had put in appearance. Ever since then, as many as nine opportunities had been granted to the defendants for filing written statement spreading over a period of more than one year. Prior to the date of the order, three effective last opportunities were granted for the purpose. Not only this, the impugned order

reveals that on June 15, 1993, learned counsel for the defendants made a statement in the trial Court specifically undertaking that written statement will be filed on July 16, 1993 at his own responsibility and in default, the defence will be treated as struck off. But still the defendants failed to abide by their stand and inevitably their defence was struck off. Sub-rule (1) of Rule 1 of Order 8 of the Code which gives unfettered powers to the Court for allowing a defendant as much time as it may think just, cannot be stretched to such an extent that the defendants be permitted to avail as much time as they wish for filing written statement of their defence. The discretion is with the Court to permit some time to the defendants having regard to the facts and circumstances of a particular case, and the defendants cannot ask for a number of opportunities as of right. There is no equity whatsoever to grant any further time to the defendants especially when the suit filed by the plaintiff-bank is for the recovery of a very heavy amount and obviously the intention of the defendants seems to delay the proceedings and forestall the passing of a decree for as long as time as they can. In a case where the defendants have availed of as many as nine opportunities spreading over a year, and rather more, and have failed to file their written statement, the Court cannot be expected to take a liberal view of the matter and still permit the defendants another opportunity for filing written statement. If it is allowed to be done so, the very purpose of impressing upon the defendants to file written statement at or before the first hearing will stand defeated.

6. Apart from the above position, I am quite satisfied that the only intention of the defendants is to delay the disposal of the suit. This intention is clear from the fact that on the first date of hearing in the present petition, learned counsel for the petitioners had sought time to have instructions from his clients to the effect whether they were ready and willing to furnish security for the entire amount claimed in the suit, or to deposit half of the amount, or to undertake to deposit rupees one lac towards costs in order to seek an opportunity to file written statement. But, as noticed earlier, the defendants refused to adopt any of three courses. Incidentally, almost a similar matter came to be considered by the apex Court also, in *Ramesh Chand and another Vs. Punjab National Bank and others*, where although the conduct of the defendants had been found to be certainly far from satisfactory and it did appear that they were trying to delay the matter, yet it was observed that one final opportunity could be given to them for filing the written statement on certain conditions. Accordingly, it was ordered that in the event of the defendant's depositing in Court a sum of Rs. two lakhs within a period of four weeks from the date of the order, they will be permitted to file their written statement within one week thereafter. It was further ordered that in the event of their not depositing the amount within the time allowed, their appeal shall stand dismissed with costs without any further orders. In the present case as well, the condition as put by the apex Court in the case noticed above, besides two options viz. of furnishing security for the entire amount claimed in the suit or to deposit half of the amount become available to the defendant-petitioners on the very first date of hearing but to no use. Even

otherwise, mere pendency of a writ petition in the High Court in respect of the same subject matter as pleaded by the petitioners, in no way justify their action of not filing the written statement or provide a good ground for the trial Court to give still another opportunity for filing written statement. Moreover, no plausible explanation or justification has been shown by the petitioners for not filing the written statement on any of the nine opportunities availed by them. In the circumstances, I find no irregularity or illegality in the order passed by the trial Court. It is clearly within jurisdiction and no interference is called for therein. The revision thus fails and is hereby dismissed.

7. Petition dismissed.