

(2011) 05 P&H CK 0113

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 7089 of 2010 (O and M)

State of Haryana and Others

APPELLANT

Vs

Sukhdev

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1
Constitution of India, 1950 — Article 227

Citation : (2011) 05 P&H CK 0113

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Judgement

Ram Chand Gupta, J.—The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 23.08.2010 passed by learned Civil Judge(Junior Division), Ambala.

2. I have heard learned Counsel for the parties and have gone through the whole record including the impugned order passed by learned trial Court.

3. Facts relevant for the decision of the present revision petition are that, a suit was filed by Respondent-Plaintiff against Petitioner-State of Haryana for declaration that he is entitled for the benefit of regularization of services from the due date at par and in the same manner in which the services of other employees junior to him, were regularized alongwith all consequential benefits. Notice of the suit was given to the present Petitioners-Defendants. Government pleader appeared for Petitioners-Defendants on 10.05.2010 and the case was adjourned to 23.08.2010 for filing written statement. However, on 23.08.2010 written statement could not be filed by Petitioners-Defendants and hence, the impugned order was passed by learned trial Court vide which defence of Petitioners was struck off.

4. It has been contended by learned Counsel for the Petitioners that one opportunity was granted by learned trial Court to Petitioners-Defendants to file written statement and that without considering the genuine request of

Petitioners, defence of Petitioners was struck off. It has been further contended by learned Counsel for the Petitioners that it has been wrongly observed by learned trial Court that several opportunities were availed by Petitioners-Defendants whereas only one opportunity was granted. It has also been contended that provision of Order 8 Rule 1 CPC is not mandatory and the same is only directory. On the point he has placed reliance upon judgment rendered by Hon''ble Apex Court in *Zolba v. Keshao and Ors.*, 2008(2) RCR (Civil) 869 and a judgment of this Court rendered in *Mani Chhabra v. Alok Chhabra*, 2010(1) RCR (Civil) 257.

5. On the other hand, it has been contended by learned Counsel for the Respondent that no case for granting another opportunity to Petitioners-Defendants to file written statement, is made out.

6. It is pertinent to reproduce Order 8 Rule 1 of Code of Civil Procedure, which reads as under:

1. Written Statement.- The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the Defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

7. The said provision has been interpreted by Hon''ble Supreme Court in *Zolba's* case (*supra*), in which it has been observed as under:

7. Considering the facts and circumstances of the present case and the statements made in the application for condoning the delay in filing the written statement, we are not in a position to hold that the Appellant was not entitled to file the written statement even after the expiry of the period mentioned in the proviso to Order 8 Rule 1 of the Code of Civil Procedure. After reading the provisions, in particular the proviso to Order 8 Rule 1 of the Code of Civil Procedure, we are unable to hold that the provisions under Order 8 Rule 1 are mandatory in nature. In *Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI)*, , it has been clearly held that the provisions including the proviso to Order 8 Rule 1 of the CPC are not mandatory but directory. It has been held in that decision that the delay can be condoned and the written statement can be accepted even after the expiry of 90 days from the date of service of summons in exceptionally hard cases. It has also been held in that decision that the use of the word "shall" in Order 8 Rule 1 of the CPC by itself is not conclusive to determine whether the provision is mandatory or directory. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the decision in that case, the same can be construed as directory. In paragraph 21 of the said decision, this Court observed as follows:

The use of the word "shall" in order 8 Rule 1 by itself is not conclusive to

determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are hand-maid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.

8. Hence, in view of the principle laid down by Hon"ble Apex Court in the aforementioned judgment that it would be open to the Court to permit the Petitioner to file written statement if exceptional circumstances are made out. In the present case, plea has been taken that due to official routine, written statement could not be filed in time. Moreover, it is not a case where inordinate delay has been caused in filing the written statement by Petitioners-Defendants. Delay is only of few days. It has been wrongly observed by learned trial Court in the impugned order that several opportunities were given to Petitioners-Defendants for filing written statement.

9. Hence, in view of these facts, the present revision petition is accepted. The impugned order is set aside.

10. Learned trial Court is directed to grant one opportunity to Petitioners-Defendants to file written statement.

11. However, in view of the fact that this action of Petitioners has caused delay in disposal of the present suit, they are burdened with cost of Rs. 5,000/-.

12. Disposed of accordingly.