

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

CR No. 1651 of 2008 (O&M)

Date of decision: November 6, 2015

A.P.S. Shergill and another

...Petitioners

Versus

Kuldip Singh and others

...Respondents

(2)

CR No. 3740 of 2008 (O&M)

A.P.S. Shergill and another

...Petitioners

Versus

Kuldip Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. A.P.S. Shergill, petitioner in person.

Mr. Rajesh Gupta, Advocate,
Advocate, for the respondents.

K. KANNAN, J. (Oral)

1. Both the civil revisions at the instance of the plaintiff. Through one order the court was allowing for the written statement filed by the 1st defendant to be received beyond the period of 90 days by dismissing the application filed by the plaintiff for discarding the written statement. Through yet another order the plaintiff's side was closed and the defendants had been permitted to bring their own evidence. Both these orders are the

subject of challenge by the plaintiff.

2. The suit was at the instance of a sister against her brothers and children of deceased sister in respect of the estate of the father Mehar Singh. The suit had been filed in the year 1999 but the 1st defendant had not been served notice through court. The 1st defendant took notice of the suit himself and it would appear that it was posted for filing of written statement on 29/09/2000. In the suit, the plaintiff had made the claims to 1/4th share in several items of properties including amounts said to be lying in some banks and some motor vehicles of high-value. There had been no description given of the bank account numbers nor any detail with reference to registration numbers of the vehicles for which the plaintiff was making a claim. This particular vagueness in the plaint was sought to be made an issue by the 1st defendant when he had moved an application directing the plaintiff to furnish better particulars. The plaintiff herself joined issue on the application filed by the defendant and the denied that she was liable to furnish any such information or that the defendant could be asking for further information of the details of properties. The 1st defendant was also requiring further documents to be produced under Order 11 Rule 16 of the Civil Procedure Code (for short '**the Code**'). The case was getting adjourned from time to time on the applications which were pending before it and the case was taken up on 11/10/2007 when the defendant appears to have moved an application for reception of the written statement and the court had passed an order receiving the statement without notice on 25/10/2007. At that stage the plaintiff moved an application under Order 8

Rules 1, 5, 10 read with section 151 CPC for passing of an appropriate order debarring the 1st defendant from filing the written statement and the decree of the suit for the plaintiff asserting statement had not been filed. It was requested that the defendant be barred from joining the proceedings in the suit and the defence of the defendants to be struck off by treating the case as having remained ex-parte and to pass the decree forthwith.

3. After hearing both the sides, the court passed the impugned order holding that the suit itself had been instituted on 05/11/1999, that was, earlier to the amendment provisions in the Civil Procedure Code setting out the time limit and therefore the said provision was not applicable. The court also pointed out to certain other factors, such as the plaintiff's conduct in not complying with the requests made by the 1st 'defendant for production of certain documents and for furnishing further particulars and the plaintiff had contributed to the delay. The court took notice of the fact that the suit involved resolution of disputes regarding a Will propounded by the defendants and it would require a full-fledged adjudication. It framed the issues and set down the case for evidence of the defendant on 11/12/2007. The order was passed on 25/10/2007 receiving the written statement filed on behalf of the 1st defendant and adjourning the case and yet another order passed on 22/11/2007 was allowing for the written statement to be retained and dismissing the application filed by the plaintiff for the reliefs sought in the application.

4. The petitioner is the son of the plaintiff and himself a legal practitioner argued in person and brought substantial case law on the subject

relating to the amended provision of Order 8 Rule 1 of the Code setting out the time limit for filing written statement and the consequences of not filing written statement within 90 days. The counsel would rely on the decision of the Supreme Court in ***Mohammad Yousuf v Faiz Mohammad and others*** reported in AIR 2009 SC (Supp) 1741 that held that when written statement was being filed 3 years after the due date and when the court had rejected the same and allowed for the plaintiff to examine his witnesses, the order so passed would not be subject to interference through a writ petition filed under article 226 of the Constitution. The counsel would also refer to the decision in ***Kailash v Nanhku and others*** in AIR 2005 SC 2441 that reiterated the principle that although the provision relating to the filing of written statement within a period of 90 days was directory, courts will take note of the imperatives of the amendment and look for strong reasons for examining whether the delay caused and filing written statement was justified. The counsel would also make reference to the judgement in ***R.N. Jadi and brothers versus Subash Chander*** in AIR 2007 SC 2571 that held that grant of extension of time beyond the 90 days will be done with the extreme circumspection. In that case incidentally written statement had been received, after condoning the delay. The order that allowed for the written statement already filed to be taken note of by the trial court was set aside by the order of the High Court and rejected the written statement filed. The Supreme Court was holding that procedural law ought not to be tyrant but ought to be a servant for the cause of justice. The petitioner would also rely on the elaborate consideration of several provisions in the amending Act

including the provision relating to Order 8 Rule 1 of the Code brought in the judgement in **Salem Bar Association v Union of India decided AIR 2005 SC 3353**.

5. Adverting to the finding of the court below that there had been no direction for filing of written statement and that the 1st defendant was making an application for reception of statement as though there had been no earlier date fixed for written statement was untrue, the plaintiff would contend that the case had been actually posted for filing of written statement on 29/09/2000 and the 1st defendant had played fraud on court by misleading it to believe that there had been no direction given already for filing of written statement. The counsel would therefore refer to several other judgements which I do not propose to reproduce for setting out the law that fraud vitiates all proceedings and the court will not assist any party who commits fraud on court.

6. After the order was passed, the court has allowed for trial to continue and it would appear that the defendants have given the evidence and the case is now posted for arguments and for judgement awaiting the decision of this court. A party out of possession may not have all details and the inadequacies in plaint could have been, if at all taken advantage by the 1st defendant in pleading for dismissal of vague claim. The plaintiff herself would not be satisfied with the initial details given in the plaint for division but she was also indulging in filing some petition or the other. The plaintiff had not even given the correct address of the 1st defendant for effective service on him. There was an application under Order 11 Rule 16 of the

Code for production of certain documents that remained undisposed of. The plaintiff did not disclose all the necessary details of properties or the documents that were required to be filed along with the plaint and spelt out under Order 7 Rule 14 of the Code. The plaintiff had also filed some application for amendment of the pleadings. Considering the nature of the suit involving claim to immovable properties of considerable value, the court was of the view that it would be only appropriate to receive the written statement and allow for further process of the trial.

7. I do not think any of the case law referred to by the counsel would extend as far as to take away the discretion of the court in allowing for written statement to be received even beyond the period of 90 days. As pointed out by the court, the vagueness of the plaint and the conduct of the plaintiff had also contributed to the delay. If the trial court had allowed for the written statement to be received under such circumstances, I do not think there was error in the court in passing the order that it did. Indeed the consideration of the application filed by the plaintiff had been elaborate and the judgement reproduces a fair consideration of all the points placed by the respective parties and there are also cogent reasons for allowing the written statement to be taken on record.

8. The interventions that this court would do under its supervisory jurisdiction under Article 227 of the Constitution ought to be limited only to orders passed without jurisdiction or which are grossly deficient in judicial consideration. The order does not suffer from any such fallibility for subjecting the same to any modification.

9. The impugned orders are sustained and the revision petitions are dismissed. Since the plaintiff's side has been closed and the defendants have also given their evidence without being subjected to any cross-examination by the plaintiff, I shall allow for the side of the plaintiff to be reopened, if only they require to be cross-examined and also give the liberty to the plaintiff to examine any more witness that she wants to examine on her side. After the cross-examination of all the witnesses of the plaintiff, the evidence already brought by the defendants by way of the affidavits as proof of Chief examination shall be taken in a logical sequence of allowing the plaintiff to cross-examine the defendants' witnesses. I thought for a while if the 1st defendant could be mulcted with cost for not filing written statement within time but the plaintiff has herself contributed to further loss of time and has needlessly brought this case to civil revision and caused delay in disposal of the suit itself. Even in the course of proceedings in this civil revision petition, I have noticed some abrasive conduct on the part of the petitioner requiring cost to be imposed for seeking endless adjournment pleas.

10. Both the civil revisions are dismissed. No costs.

November 6, 2015
prem

(K.KANNAN)
JUDGE