

5. I have considered the submissions made by counsel for the petitioner.

6. This Court is of the view that the present petition can be disposed of without issuing any notice to the opposite party, for the reasons stated herein below.

7. Admittedly, the Delhi High Court in *M/s Jsbs Cargo (supra)* remitted the matter to trial Court after holding that provision of Section 143(A) of Negotiable Instruments Act, is only directory in nature. Even the Karnataka High Court in Criminal Petition No.100261/2022 *Vijaya Vs. Shekharappa and another* decided 17.02.2022 reported in 2022 Live Law (Kar) 82, has also taken similar view.

8. Admittedly, no opportunity was given to the petitioner to file his response, before passing of the impugned order despite the fact that he had not pleaded guilty to the notice of accusation served upon him under Section 138 of Negotiable Instruments Act. From the perusal of impugned order, it appears that the Trial Court granted interim compensation under Section 143(A) of Negotiable Instruments Act just in a routine manner and there is no application of mind as to why the said compensation has to be awarded. The Trial Court misread Section 143(A) of Negotiable Instruments Act and treated the said provision as mandatory in nature, whereas the legal position is otherwise as has been discussed above.

9. In light of the above, the impugned order to the extent it has been challenged is liable to be set aside being non-speaking and contrary to settled position of law as detailed above.

10. Consequently, the present petition is hereby allowed and the impugned order dated 05.04.2021 to the extent stated above, is hereby set aside and the matter is remanded back to learned Trial Court to dispose of the matter regarding grant of interim compensation to the complainant/respondent under Section 143A, in accordance with law within one month of the receipt of certified copy of this order.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Manjari Nehru Kaul, J.

CR-1660-2020

Decided on: 20.05.2022

Paro and others

Petitioners

Versus

Mahindo

Respondent

Present:

Mr. Prabhjot Singh Chahal, Advocate for Mr. Kamal Narula, Advocate for the petitioners.

A. Code of Civil Procedure, 1908 (V of 1908), Order 8 Rule 1 – Delay in written statement – Condonation of delay – Discretion of court -- Provision is directory in nature, however, at the same time the Courts must exercise their discretion to condone the delay, if any, in filing the

written statement after exercising due circumspection and in case there appears to be an attempt on the part of the defendant to engage in dilatory tactics, the Courts should nip the same unhesitatingly.

(Para 5)

B. Code of Civil Procedure, 1908 (V of 1908), Order 8 Rule 1 – Delay in written statement – Miscarriage of justice -- Petitioners granted four opportunities to file their written statement, however, they failed to do so -- If the petitioners are not granted one more opportunity, they would suffer irreparable loss which in turn would result in miscarriage of justice -- Therefore, for just and proper adjudication of the case, this Court deemed it appropriate to grant one last effective opportunity to the petitioners to file their written statement subject to payment of costs in the sum of Rs.5,000/- to be paid to the respondent which shall be a condition precedent.

(Para 6, 7)

MANJARI NEHRU KAUL, J. (ORAL) –

1. The petitioners/defendants are impugning order dated 21.11.2019, passed by the learned Additional Civil Judge (Sr. Divn.), Ferozepur, vide which their defence was struck off in the civil suit filed by the respondent/plaintiff.

2. Learned counsel for the petitioners submits that the petitioners were unable to file their written statement initially for genuine reasons which were beyond their control. He further submits that no doubt the trial Court did grant one last opportunity to the petitioners to file their written statement, subject to payment of costs of Rs.500/-, however, they were unable to do so on account of ill-health of petitioner/defendant No.1, who is an old lady. Learned counsel submits that since the trial is still at an initial stage, it would not in any manner adversely affect the progress of the trial in case one last effective opportunity is granted to the petitioners to file their written statement.

3. I have heard learned counsel and perused the material on record.

4. The provisions of Order 8 Rule 1 of the CPC no doubt are directory in nature, however, at the same time the Courts must exercise their discretion to condone the delay, if any, in filing the written statement after exercising due circumspection and in case there appears to be an attempt on the part of the defendant to engage in dilatory tactics, the Courts should nip the same unhesitatingly.

5. Adverting to the case in hand, the petitioners were granted four opportunities to file their written statement, however, they failed to do so.

6. Be that as it may, if the petitioners are not granted one more opportunity to file their written statement, they would suffer irreparable loss which in turn would result in miscarriage of justice. Therefore, for just and proper adjudication of the case, this Court deems it appropriate to grant one last effective opportunity to the petitioners to file their written statement.

7. In the wake of the above, without issuing notice to the respondent, to avoid any further delay as well as expenses which she shall have to incur to defend these proceedings, the impugned order dated 21.11.2019, is set aside.

The instant revision petition is allowed in the following terms:-

1. The petitioners are granted one last effective opportunity to file their written statement.
2. In the event of default by the petitioners, the case shall not be adjourned any further for filing of their written statement and consequently their defence shall be deemed to be struck off.
3. This, however, shall be subject to payment of costs in the sum of Rs.5,000/- to be paid to the respondent which shall be a condition precedent.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Alka Sarin, J.

RSA-524-2020 (O&M)

Reserved on: 26.05.2022

Date of Decision: 31.05.2022

Prithipal Singh (now deceased) through his LRs

Appellant

Versus

Harmander Singh & Others

Respondents

Present:

Mr. Rajesh Sethi, Advocate and

Mr. Manvinder Singh Sidhu, Advocate for the appellant.

A. Code of Civil Procedure, 1908 (V of 1908), Section 96 – First Appeal – Grounds of appeal -- Arguments raised that the Firm which is the owner of the property was not impleaded as a party as well as one of the vendees was not impleaded as a party -- Further, the argument raised that the suit was not maintainable in the present form -- None of the said arguments were specifically raised before the lower Appellate Court and are also not detailed in the memorandum of appeal filed before the lower Appellate Court -- Hence, the same deserve to be rejected.

(Para 8)

B. Code of Civil Procedure, 1908 (V of 1908), Order 8 Rule 3 -- Cause of action – Pleading – Simplicitor denial – Specific denial – Effect of – Paragraph in the plaint qua the content as to when the cause of action arose would be deemed to having been admitted by the defendant inasmuch as a perusal of the written statement reveals that there is a simpliciter denial to the said paragraph – In the absence of any specific denial, the contents of the paragraph would be deemed to be admitted.

(Para 8)

Cases referred:

1. Md. Noorul Hoda Vs. Bibi Raifunnisa & Ors., 1996(7) SCC 767.
2. Sneh Gupta Vs. Devi Sarup & Ors., 2009(2) RCR (C) 129.