



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
128 **CR-2165-2025(O&M)**
Date of decision: 07.04.2025

Ashwani Goyal

...Petitioner(s)

Vs.

Satish Kumar & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Ankush Singla, Advocate
for the petitioner.

NIDHI GUPTA, J.

Present Revision Petition under Article 227 of the Constitution of India has been filed by the defendant No.1 seeking setting aside of the impugned order dated 29.11.2024 (Annexure P1) whereby the petitioner was proceeded against ex parte; **and** for setting aside order dated 21.03.2025 (Annexure P3) whereby the application dated 23.12.2024 (Annexure P2) filed by the petitioner for setting aside order dated 29.11.2024, has been dismissed.

2. Learned counsel for the petitioner submits that the impugned orders have been wrongly passed against the petitioner as only one opportunity was granted to the petitioner for filing written statement. It is submitted that various applications filed by the parties remained pending before the learned trial Court. As such, written statement could not be filed. Only one opportunity was given to the petitioner for filing written statement. Moreover, service could not be completed and therefore,



written statement was not filed. Even otherwise, no witness has been examined as yet. As such, it is prayed that the impugned order be set aside otherwise grave prejudice will be caused to the petitioner.

3. No other argument is made on behalf of the petitioner.
4. I have heard learned counsel for the petitioner and perused the case file in great detail.
5. I find no merit in the submissions made on behalf of the petitioner. The facts of the case are that the plaintiffs/respondents No.1 and 2 (real brothers of the petitioner) had filed a suit dated 17.10.2018 for declaration to the effect that the suit properties have been orally partitioned; consequentially the Gift Deeds and Sale Deeds were challenged. It is admitted by the petitioner that he had put in his appearance in the said suit on 30.11.2018. However, admittedly, written statement has not been filed till date ostensibly for the reasons aforementioned. Thereafter, the learned trial Court first proceeded ex parte against the petitioner vide impugned order dated 29.11.2024; and subsequently, struck off the defence of the petitioner vide impugned order dated 21.03.2025 by giving following reasons:-

“5. Perusal of the file reveals that the defendant no.1 was proceeded against exparte vide order dated 29.11.2024 of this Court on suffering statement of no instructions by counsel for defendant no.1. The applicant/defendant no.1 has alleged that during the proceedings, plaintiffs admitted that they shall



withdraw the present suit and hence defendant No.1 could not give any instructions to his counsel. This Court is of the considered view that the applicant/defendant no.1 has not stated a valid reason for his non-appearance as no such statement has been made before the Court. Perusal of file reveals that defendant no.1 appeared through counsel on 30.11.2018. However, he had not filed written statement and reply to stay application till 15.09.2021 i.e. during the period of more than two and half years. Rather on 15.09.2021, he alongwith defendant no.4 filed application under Order 7 Rule 11 CPC. When the case was fixed for arguments on the said application, he withdrew the said application on 02.05.2024 and filed another application on the said day under Section 10 CPC read with Section 151 CPC. The said application was dismissed by this Court vide order dated 06.11.2024 and case was adjourned to 19.11.2024 for filing written statement and reply to stay application on behalf of defendants no.1,2, and 4, subject to last opportunity. On 19.11.2024, the said defendants again not filed the written statement and reply to stay application, hence, case was adjourned for 29.11.2021 for filing the same and it was ordered that otherwise defence shall be struck off. On 29.11.2024, learned counsel for the defendant no.1 withdrawn his power of attorney on behalf of defendant no.1. Meaning thereby that the defendant no.1 failed to file written statement and reply to stay application even during the period of six years from his appearance on 30.11.2018 and when he was under the knowledge that his defence is going to be struck off, his counsel withdrawn his power of attorney. Thereafter, when three witnesses were examined by plaintiffs,



the same counsel of defendant no.1 filed present application for setting aside the ex parte order. This Court is of the considered view that it is apparent from the conduct of applicant/defendant no.1 that he has left no stone unturned to delay the proceedings of the present case and he is misusing the process of law. Also, the present case is more than six years old and falls under the category of Action Plan cases, as such, at this stage, allowing the present application, shall cause further delay in the present suit.”

6. From the above facts, it is clear that misleading statements have been made by the petitioner. It would also appear that the petitioner is trying to delay the proceedings before the learned trial Court. Such conduct cannot be condoned.
7. In view of the above, present petition is **dismissed**.
8. Pending application(s) if any also stand(s) disposed of.

07.04.2025
Sunena

(Nidhi Gupta)
Judge

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