

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

CR No.1005 of 2015

Decided on: March 18, 2015.

Baljinder Singh and another

.... Petitioners

Versus

Jeet Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. N.S. Dadwal, Advocate,
for the petitioners.

None for respondent No.1.

M.M.S. BEDI, J (ORAL)

Respondent No.1 has been served through the Advocate in the lower Court as per provisions of Order 3 Rule 3 (1) read with Order 41 Rule 14 (2) CPC. None appeared on his behalf. He is proceeded exparte.

Vide order dated 19.11.2014 Annexure P-1, the defence of the petitioners was struck off under Order 8 Rule 1 CPC for having not filed written statement within 90 days. The petitioners filed an application on the same day for recalling the said order after lunch hour which was entertained and adjourned. The said application was ultimately dismissed vide order 27.01.2015. The validity of order dated 27.01.2015 and 19.11.2014 has been questioned by the petitioners by invoking jurisdiction under Article 227 of the Constitution of India.

Learned counsel for the petitioners has submitted that a valuable right to contest the case by filing written statement has been snatched away by striking off the defence of the defendants-petitioners.

Perusal of the impugned order dated 27.01.2015 indicates that prayer for recalling of the order dated 19.11.2014 was made on the ground that defendant No.2 was ill and was admitted in hospital and defendant No.1 was busy in looking after her.

On account of said circumstances, it was claimed that the written statement could not be filed within statutory period.

I have considered the facts and circumstances of the case.

As per judgment of Apex Court in **Sardar Amarjit Singh Kalra and others Vs. Parmod Gupta and others 2003 (3) S.C.C. 272**, the laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication merits of substantial rights of citizen under personal property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.

Besides this, the Apex Court in judgments **Kailash Vs. Nanhku and others 2005 (2) RCR (Civil) 379** and **Rani Kusum Vs. Kanchan Devi 2005 (3) RCR (Civil) 727** has observed that the provisions of Order 8 Rule 1 CPC are directory and not mandatory in nature.

Similar is the ratio of judgment of a Coordinate Bench of this Court in **Gulshan Kumar Vs. Asha Taneja 2006 (2) RCR (Civil) 556**.

In view of the above said judgments, the order dated 27.01.2015 and the order dated 19.11.2014 are hereby set aside. A direction is issued that the petitioners-defendants will be permitted to file written statement on next date of hearing fixed before the trial Court subject to payment of Rs.5,000/- as costs to the plaintiff-respondent Jeet Singh. It is

made clear that in case the costs is not paid or written statement is not filed
on that day, this petition will be deemed to have been dismissed.

Allowed in above said terms.

(M.M.S. BEDI)
JUDGE

March 18, 2015
harsha