

CR-1508-2015 (O&M)

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

**CR-1508-2015 (O&M).
Decided on: March 3, 2015.**

Rachhpal Singh

..... Petitioner(s)

Versus

Punjab and Sind Bank and others

..... Respondent(s)

*** * ***

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

**PRESENT Mr.C.S.Rana, Advocate,
for the petitioner.**

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

In a suit filed by the plaintiff-respondent No.1 bank under Order 34 CPC for recovery of a sum of Rs.9,12,553/- by sale of land mentioned in the headnote of the plaint, the defence of the petitioner has been struck off as he failed to file written statement within 90 days.

From the order passed on 29.9.2014, the other defendants appear to be ex parte. The petitioner who is defendant No.3 before the trial Court claims that he being a guarantor would be seriously prejudiced in case opportunity is not granted to him for filing the written statement.

I have considered the facts and circumstances of the case.

The order passed by the trial Court appears to be appropriate as time granted to the defendant petitioner to file written

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statement has not been utilized by him but at the same time it cannot be ignored that the power under Order 8 Rule 1 CPC is part of procedural law and it has been held to be directory and not mandatory as per the judgment in **Smt. Rani Kusum vs Smt. Kanchan Devi And Ors AIR 2005 SC 3304.**

This petition is disposed of with a direction that the petitioner will file written statement within a period of 10 days subject to payment of costs of Rs.20,000/-.

The petition is disposed of in limine in order to save the expenses and time of the plaintiff-respondent bank. In case the order is not acceptable to the plaintiff-respondent bank, it will be open to it to approach this Court for recalling of the order.

It is also made clear that in case the written statement is not filed within the above said period, this petition will be deemed to have been dismissed.

March 3, 2015.
rka

(M.M.S. BEDI)
JUDGE