

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

CR No. 1953 of 2015 (O&M)

Date of decision : 19.3.2015

Parkash

.. Petitioner

versus

Rajiv and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Vijay Rana, Advocate, for the petitioner.

Rajesh Bindal, J.

In the present petition, the challenge is to the order dated 22.1.2015 passed by the learned court below, whereby on account of non-filing of written statement by the petitioner/ defendant no. 3, her defence was struck off.

The proceedings in the present case arise out of a suit filed by respondent nos. 1 and 2 /plaintiffs against the petitioner and respondent nos. 3 and 4 for specific performance of agreement to sell dated 15.5.2001 with consequential relief of permanent injunction.

For the view I am taking in the present petition, I do not deem it appropriate to issue notice to the respondents, as the same would unnecessarily delay not only the disposal of the present petition but the suit as well.

Learned counsel for the petitioner submitted that notice of the suit was issued to the petitioner. She appeared first time before the court below on 21.8.2014 on which date, the case was adjourned to 22.9.2014 for service of defendant nos. 1 and 2 as well as for filing written statement by the petitioner. As on 22.9.2014 the Presiding Officer was on leave, the case was taken up on 20.9.2014 and it was adjourned to 20.11.2014. On 20.11.2014 and 13.1.2015 also the case was adjourned for filing written statement by the petitioner and for service of defendant nos. 1 and 2 on filing of correct address. On 22.1.2015, the petitioner could not file the

written statement and her counsel prayed for time to file the same, however, the learned court below struck off her defence. It was submitted that written statement could not be filed in time as certain documents were being collected to prepare the same. It was submitted that delay in filing the written statement was not intentional. It was further submitted that service of defendant nos. 1 and 2 is yet to be completed and evidence of the plaintiffs is yet to start. The case is fixed on 15.4.2015 for that purpose. The prayer is that order dated 22.1.2015 striking off defence of the petitioner be set aside and one opportunity be granted to file the written statement. He has relied upon judgments of Hon'ble the Supreme Court in **Kailash vs Nanhku and others**, JT 2005(4) SC 204; **Salem Advocate Bar Association, Tamil Nadu v. Union of India**, JT 2005(6) SC 486 and **M/s R. N. Jadi and Brothers and others v. Subhashchandra**, JT 2007(9) SC 165 to submit that Order VIII Rule 1 of the Code of Civil Procedure has been held to be directory in nature and not mandatory.

After hearing learned counsel for the petitioner, I find merit in the contentions raised by him. It has been consistently opined by Hon'ble the Supreme Court in the judgments, referred to above, that Order VIII Rule 1 of the Code of Civil Procedure which provides time for filing of written statement is directory in nature in case sufficient cause is shown for its non-filing in time.

Considering the aforesaid facts, I deem it appropriate to grant one opportunity to the petitioner to file written statement. Accordingly, the petitioner is permitted to file written statement before the learned court below on or before 15.4.2015 with a copy in advance to counsel for the respondents/ plaintiffs, subject to payment of ₹ 5,000/- as costs to be paid equally i.e. ₹ 2,500/- to each plaintiff by way of demand draft.

The petition stands disposed of accordingly.

19.3.2015
vs

(Rajesh Bindal)
Judge