

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 2039 of 2015 (O&M)

Date of decision : 23.3.2015

Veena Rani

... Petitioner

VS

Pawan Kumar

... Respondent

Coram : Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Balkar Singh, Advocate for the petitioner.

Rajesh Bindal, J.

In the present petition, the challenge is to the order dated 17.12.2014 passed by the learned court below, whereby on account of non-filing of written statement by the petitioner/ defendant, her defence was struck off.

The proceedings in the present case arise out of a suit filed by the respondent /plaintiff against the petitioner/ defendant for separate possession by way of partition.

For the view I am taking in the present petition, I do not deem it appropriate to issue notice to the respondent, 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 30.7.2014 on which date, the case was adjourned to 9.9.2014 for filing written statement. Thereafter on two dates of hearing, the case was adjourned for the purpose of filing of written statement. On the adjourned date, counsel for the petitioner had wrongly noted the next date of hearing as 19.12.2014, which was actually 17.12.2014. Her counsel did not enquire about the order passed on 17.12.2014. When her counsel appeared in Court on 19.2.2015 and sought to file written statement, it was informed that defence of the petitioner had been struck off on 17.12.2014. It was

submitted that written statement is ready and evidence of the plaintiff is yet to start. The case is fixed on 10.4.2015 for that purpose. The prayer is that order dated 17.12.2014 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 10.4.2015 with copy in advance to counsel for the respondent/ plaintiff, subject to payment of ₹ 5,000/- as costs to be paid to the plaintiff by way of demand draft.

The petition stands disposed of accordingly.

23.3.2015

vs.

(**Rajesh Bindal**)
Judge