

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

**CR-2116-2015 (O&M)
Date of decision : April 20, 2015**

Duli Chand

..... Petitioner

Versus

Prem Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present : Mr. Arun Yadav, Advocate,
for the petitioner.

GURMIT RAM, J.

1. The petitioner/defendant has filed this revision petition against order dated 31.10.2013 (Annexure P-2) vide which his defence was struck off by the learned Civil Judge (Junior Division), Rewari and order dated 24.02.2015 (Annexure P-5) vide which his application under Order 8 Rule 1 read with Section 151, CPC, was also dismissed.

2. In para No.3 of the revision petition, the zimni orders passed by the learned trial Court at the stage of filing the written statement as well as reply to the stay application are reproduced. From the perusal thereof, it is found that the petitioner/defendant put in appearance before the learned trial

Court on 17.12.2012. On three dates the case remained pending at the stage of awaiting report of Local Commissioner. On one date, the Presiding Officer was on leave. Then on another date, the Court was not held due to reason that civil work remained closed during summer vacation. Three opportunities were granted to the petitioner/defendant to file written statement, which he did not file. Ultimately his defence was struck off vide the impugned order dated 31.10.2013 (Annexure P-2). Then, he filed an application under Order 8 Rule 1 CPC for permission to place on record written statement, which was also dismissed vide the impugned order dated 24.02.2015 (Annexure P5).

3. The petitioner/defendant feeling aggrieved from the aforesaid both the impugned orders has come up in the instant revision petition.

4. Learned counsel for the petitioner was heard and record was also perused as available on the file.

5. It is the case of the petitioner that he is an illiterate person. He could not file written statement in time due to negligence on the part of his counsel. Herein the learned counsel for the petitioner/defendant contended that sufficient cause has been shown in this case by the petitioner/defendant for not filing written statement within time. Herein he has also relied upon the case law as laid down by this Court in case titled as ***Nasero and others vs. Alisher 2011(3) PLR 594***, wherein it has been laid down that if sufficient cause has been shown then defendant can be allowed to file written statement after the expiry of the mandatory period of 90 days. In this authority reference is also made of two authorities of the Hon'ble Apex Court titled as ***Kailash vs. Nankhu and others, 2005(2) RCR (Civil) 379***

and Smt. Rani Kusum vs. Smt. Kanchan Devi and others, 2005(3) RCR (Civil) 727, wherein it has been held that provisions of Order 8 Rule 1, CPC, are directory and not mandatory in nature”.

6. Though sufficient opportunities have been granted to the petitioner/defendant to file written statement, even then in the interest of justice he deserves for one more opportunity in order to enable him to file written statement for adjudicating the matter in controversy properly and effectively. So accordingly this revision petition is accepted and the impugned order is set aside. The petitioner/defendant is granted one more opportunity to file written statement in this case subject to cost of ₹10,000/-, half of which be deposited in the District Legal Aid Fund and remaining half amount be paid to the respondent/plaintiff.

6. It is, however, made clear that if the respondents / plaintiffs feel dissatisfied with this order then in that eventuality they are at liberty to approach this Court by way of an application etc. to get this revision petition revived. The petitioner/defendant is directed to appear before the learned Trial Court on 04.05.2015 and the learned trial Court will grant him one more opportunity to file written statement as directed above.

April 20, 2015
Gaurav Sorot

(GURMIT RAM)
JUDGE