

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

Civil Revision No. 2154 of 2015 (O&M)

Date of decision : 26.3.2015

Dinesh

..... Petitioner

VS

Satish Kumar and others

..... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Vivek K. Thakur, Advocate, for the petitioner.

Rajesh Bindal J.

In the present petition, the challenge is to the order dated 2.2.2015 (Annexure P-4) passed by the learned court below, whereby on account of non-filing of written statement by the petitioner/defendant, his 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 to 6 for specific performance of agreement to sell dated 8.10.2013.

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 on 21.7.2014 to 21.8.2014. The petitioner/defendant appeared first time before the court below on 26.8.2014. On 21.1.2015, the case was adjourned to 31.1.2015 for filing the written statement as well as reply to stay application. On 31.1.2015, the case was again adjourned to 2.2.2015 for the said purpose subject to payment of ₹ 500/- as costs. Counsel for the petitioner wrongly noted the next date of hearing as 2.3.2015 instead of 2.2.2015, on which date the defence of the defendants

was struck off and the case was adjourned to 19.3.2015. On 2.3.2015, when the counsel for the petitioner enquired about the case, he came to know about wrong noting of date and the next date of hearing as 19.3.2015. The petitioner did not come to know about the order dated 2.2.2015, striking off his defence. On 19.3.2015, the petitioner came to know about the order dated 2.2.2015 striking off his defence, however, the plaintiffs examined four witnesses, who were present in Court. It was submitted that written statement could not be filed in time as wrong date was noted otherwise the same was ready. It was submitted that delay in filing the written statement was not intentional. The case is now fixed on 30.3.2015. The prayer is that order dated 2.2.2015 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 30.3.2015 with a copy to counsel for the respondents/ plaintiffs, subject to payment of ₹ 10,000/- as costs by way of demand draft and ₹ 2,500/- as costs to each of the four PWs by way of demand draft, who have already been examined, as they may have to be summoned for cross-examination. Respondent nos. 1 and 2/ plaintiffs shall file, replication if any. The issues may be reframed keeping in view the stand of the

petitioner/defendant in the written statement and the replication, if any, to be filed by the plaintiffs. Thereafter the case be proceeded with in accordance with law. If aggrieved, respondent nos. 1 and 2/ plaintiffs shall have right to file application for recalling the aforesaid order.

The petition stands disposed of accordingly.

26.3.2015

vs.

(Rajesh Bindal)
Judge