

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 2432 of 2015

Date of Decision: April 8, 2015

EIC Irrigation Department, Haryana, Panchkula and anr.
.....Petitioners

Vs.

Jagpal Singh and ors.
.....Respondents

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

-. -

Present:- Mr.Sidharth Sanwaria, DAG, Haryana, for the petitioners.

-. -

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

Vide impugned order the defence of the State authorities defendant- petitioners has been struck off, in the exercise of powers under Order 8 rule 1 CPC for having not been able to file written statement.

It is contended by learned counsel for the petitioners that on account of certain official formalities, the filing of written statement was delayed.

Heard. A perusal of the plaint indicates that plaintiff-respondents, claiming right of a passage on a land on the basis of the decision of Consolidation Authorities have challenged the removal of path in dispute while construction of Barinder Narain Chakroverty Canal by the defendant- petitioners.

Prima facie, personal rights have to be adjudicated against the public rights. The act of the State authorities is being challenged. In case written statement is not permitted to be filed, public interest might be prejudiced. It is settled principle of law that the provisions of Order 8 Rule 1 CPC are directory and not mandatory. In this regard, reference can be made to judgment of the Apex Court in **Smt. Rani Kusum Vs. Smt. Kanchan Devi and ors.**, AIR 2005 SC 3304 and **Kailash Vs. Nanhku and ors.**, 2005 (2) RCR (Civil) 379.

In order to avoid unnecessary delay and expenditure, I deem it appropriate to dispose of this petition in limine by giving one opportunity to the defendant – petitioners to file written statement to enable the State authorities to contest the claim of the plaintiff- respondents subject to payment of cost of Rs.10000/-. Ordered accordingly.

Since this petition is disposed of in limine to safeguard the rights of the plaintiff- respondents and to save them from unnecessary harassment, it is ordered that in case the order is not acceptable to the plaintiff- respondents, it will be open to them to approach this Court for review of the order.

It is made clear that in case the written statement is not filed on the next date of hearing before the trial Court or cost is not paid, this petition will be deemed to have been dismissed.

April 8, 2015
sanjay

(M.M.S.BEDI)
JUDGE