

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 2442 of 2015

Date of Decision: April 8, 2015

Kailasho Devi and ors.

.....Petitioners

Vs.

Subash Chand and ors.

.....Respondents

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

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Present:- Mr.R.K. Mathur, Advocate
for the petitioners.

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

This is defendants' revision petition. While service of five defendants was incomplete, the request of the defendant-petitioners for filing written statement was declined vide impugned order dated February 23, 2015 on the ground that they were served and they had put in appearance on November 1, 2014. In view of said circumstances, the defence of the defendant-petitioners (defendants No.1 to 3) has been struck off.

I have heard learned counsel for the petitioners. The plaintiff-respondents have sought declaration pertaining to certain revenue entries

made on the basis of partition deed pertaining to land in dispute claiming that the entries suffer from the vice of fraud as such would be void.

Without expression of any opinion on merits of the case and stage of the suit, it is sufficient to observe that it is a settled principle of law that the procedural law should not ordinarily be construed as mandatory as the procedural law is always subservient to and is supposed to aid the ends of justice. The trial Court, no doubt had jurisdiction under Order 8 Rule 1 CPC to strike off the defence on account of non-filing of the written statement within 90 days but said provisions have repeatedly been held to be directory and not mandatory. It is always open to the Court to entertain a written statement beyond 90 days in case there are exceptional circumstances occasioned by reasons beyond the control of the defendants or when grave injustice would be occasioned in case the time is not extended for filing written statement. The rights of the defendant – petitioners are likely to be prejudiced by closing the doors of the Court to them and obstructing their rights to file a written statement at a stage where the other co-defendants have not yet been served. 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 has held that the provisions of Order 8 Rule 1 CPC are directory and not mandatory. The ratio of the said judgment has been followed by this Court in **Raj Kumar Vs. Rati Ram**, 2006 (2) RCR (Civil) 162.

In view of the above said judgments, I am of the considered opinion that the defendants could be granted one opportunity to file written statement subject to payment of cost to the plaintiff- respondents. In order to avoid unnecessary harassment, expenditure and to prevent delay in adjudication of the suit, I deem it appropriate to dispose of this petition in limine. Ordered accordingly.

It is ordered that one opportunity will be granted to the petitioners to file written statement on next date of hearing fixed before the trial Court subject to payment of cost of Rs.10000/-.

Since this petition is being disposed of in limine to avoid unnecessary harassment to the plaintiff- respondents, 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 to seek review of the order. However, it is clarified that in case the written statement is not filed on next date of hearing or cost is not offered, this petition will be deemed to have been dismissed.

April 8, 2015
sanjay

(M.M.S.BEDI)
JUDGE