

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 2405 of 2014

Date of Decision: April 28, 2015

Vijay Ganpati

.....Petitioner

Vs.

Ms. Chitra Ganpati and another

.....Respondents

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

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Present:- Mr. G.S. Sirphikhi, Advocate
for the petitioner.

Mr. S.K. Jha, Advocate for respondent No.1.

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

Petitioner is a defendant in a Probate petition filed by respondent No.1 who happens to be his real sister. Vide impugned order dated March 22, 2014 passed by Additional District Judge, Gurgaon, the petitioner has not been permitted to place on record written statement, annexure P-7 dated March 5, 2014 in Probate Petition.

Counsel for respondent No.1 has submitted that the defence of the petitioner had been struck off after he had been given last opportunity to file written statement, vide order dated February 10, 2014.

After hearing counsel for the petitioner and going through the record, it transpires that the petitioner had filed a CR No. 1185 of 2014 against the order dated February 10, 2014 declining an opportunity to him to file written statement and striking off his defence in the Probate Petition, which was decided on February 17, 2014 by allowing the petitioner to file written statement on February 18, 2014 i.e. the date fixed before the trial Court. The petitioner appears to have not filed the written statement on February 18, 2014 as such his application for granting time to produce orders of the High Court dated February 17, 2014 has been dismissed. The petitioner seems to have not complied with the order dated February 17, 2014 as he failed to file the written statement on next date of hearing i.e. February 18, 2014.

Counsel for respondent No.1 has submitted that the petitioner has got intention to delay the matter as the written statement now sought to be presented in the Court of Additional District Judge, Gurgaon, annexure P-7, is still an interim written statement of the petitioner which has been prepared with some mischievous and extraneous consideration. However, counsel for the petitioner has submitted that the petitioner does not want to add anything to the written statement, annexure P-7 and seeks time to file the same as such before the trial Court.

Counsel for both the parties inform that the next date of hearing before the trial Court is April 30, 2015. If seen in context to the provisions of Order 8 Rule 1 CPC, the trial Court has rightly struck off the defence of

the petitioner for having not filed written statement but at the same time, it cannot be ignored that the provisions of Order 8 Rule 1 CPC have been considered to be directory and not mandatory in the following judgments:-

1. **Kailash Vs. Nankhu and ors.**, 2005 (2) RCR (Civil) 379.
2. **Rani Kusum Vs. Kanchan Devi**, 2005 (3) RCR (Civil) 727.

It is settled principle of law that the rules are handmade of justice and have to be construed taking into consideration the rules of natural justice, taking into consideration the fact that a fair opportunity should be granted to the parties to get their rights in the property left by Shri Ram Ganpati, I deem it appropriate to grant him permission to file written statement, simultaneously compensating respondent No.1 with costs for unnecessary harassment caused to her on account of delay caused in filing the written statement.

This petition is allowed. Petitioner is permitted to file the written statement subject to payment of cost of Rs.25000/-. It is ordered that in case the cost is not paid on next date of hearing i.e. April 30, 2015, this petition will be deemed to have been dismissed.

The written statement placed on the lower Court record will be accepted by the Court to be the final written statement by the petitioner subject to payment of cost aforementioned.

April 28, 2015
sanjay

(M.M.S.BEDI)
JUDGE