

CR-2867-2015 (O&M)

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

**CR-2867-2015 (O&M).
Decided on: April 29, 2015.**

Kamal Kumar and another

..... Petitioner(s)

Versus

Surinder Singh and others

..... Respondent(s)

*** * ***

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

**PRESENT Mr.B.B.S.Sobti, Advocate,
for the petitioners.**

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

The petitioners are defendant Nos.1 & 2 in a suit filed by the plaintiff-respondent Nos.1 to 3, for declaration that sale deed regarding the suit land executed by father of the plaintiff-respondent Nos.1 to 3 was null and void. The defence of the petitioners has been struck off for having not filed written statement despite the fact that they had put in appearance for the first time before the Court on 26.8.2014.

Counsel for the petitioners has submitted that on account of having not been properly advised and the Presiding Officer having been on leave for two consecutive dates of hearing inadvertently, the written statement could not be filed. It has been submitted that the talks of compromise were also in progress which factor is also responsible for lethargy on part of the petitioners and their counsel to file written statement.

After hearing the counsel for the petitioners, I am of the opinion that technically the order passed by the Courts below is sound as per the provisions of Order 8 Rule 1 CPC but at the same time it could not be ignored that the provisions of Order 8 Rule 1 CPC, have been held to be directory and not mandatory. In this context, a reference can be made to judgments **Smt. Rani Kusum Vs.Smt.Kanchan Devi, AIR 2005 (SC) 3304, and Kailash Vs. Nankhu, 2005 (4) SCC 480.**

Without expression of any opinion regarding the sufficiency of the grounds for delay in filing of the written statement, I deem it appropriate to dispose of this petition in limine with an objective to protect the plaintiffs-respondents from unnecessary delay, harassment and expenditure.

This petition is disposed of in limine by giving one opportunity to the petitioners to file the written statement on next date of hearing i.e., 8.5.2015, in order to enable the petitioners to seek adjudication of the controversy in dispute on merits by contesting the same subject to payment of costs of Rs.5,000/- to the plaintiffs-respondents for the unnecessary harassment and delay caused. It is made clear that in case written statement is not filed on next date of hearing or the costs is not paid, this petition will be deemed to have been dismissed.

Since this petition is disposed of in limine, it will be

CR-2867-2015 (O&M)

open to the plaintiffs-respondents to approach this Court for review of the order in case the order is not acceptable to them.

April 29, 2015.
rka

(M.M.S. BEDI)
JUDGE