

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

CR No. 2947 of 2015 (O&M)

Date of decision : 1.5.2015

Tarlok Singh

.. Petitioner

versus

Paramjit Kaur and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. S. S. Kainth, Advocate for
Mr. R. K. Arya, Advocate, for the petitioner.

Rajesh Bindal, J.

In the present petition, the challenge is to the order dated 10.2.2015 (Annexure P-2), passed by the learned court below, whereby on account of non-filing of written statement by the petitioner/ defendant no. 1, his defence was struck off.

The proceedings in the present case arise out of a suit filed by respondent no. 1/plaintiff against the petitioner and respondent nos. 2 and 3 for possession.

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 to the petitioner. After issuance of notice, the petitioner appeared on 13.8.2014 and sought time for filing written statement and the case was adjourned to 25.9.2014. As the Presiding Officer was on leave on 25.9.2014, the case was adjourned to 29.10.2014. Thereafter, due to unavoidable circumstances, the written statement could not be filed. On 10.2.2015, due to non-filing of written statement by the petitioner, his defence was struck off. It was submitted that written statement could not be filed in time as certain documents were being collected to prepare the same. It was submitted that delay in filing the written statement was not

intentional. It was further submitted that evidence of the plaintiff is yet to start. The case is fixed on 22.7.2015 for that purpose. The prayer is that order dated 10.2.2015 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 or before 25.5.2015 with copy in advance to counsel for respondent no. 1/ plaintiff, subject to payment of ₹ 1,000/- as costs to the plaintiff by way of demand draft. The respondent no. 1/ plaintiff shall file replication, if any, on or before next date fixed in the court below. The issues, if required, may be framed/ reframed keeping in view the stand of the petitioner/defendant in the written statement and the replication, to be filed, on the same day. Summoned witnesses shall be examined on the date already fixed. If aggrieved, respondent no. 1/ plaintiff shall have right to file application for recalling the aforesaid order.

The petition stands disposed of accordingly.

1.5.2015
vs

(Rajesh Bindal)
Judge