

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3377 of 2015 (O&M)

Date of decision: 18.05.2015

Jarnail Masih through LRs

... Petitioners

versus

Mrs. Dena and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Ms. Harveen Kaur, Advocate for the petitioners.

K.Kannan, J.

There is no justification for the revision petitioners to apply to this Court when the procedure is to move the trial Court itself with an application to condone the delay in filing the written statement and seek for reception of written statement. It has been held in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, 2005(3) RCR (Civil) 530 where Hon'ble the Supreme Court observed that:

“The use of the word 'shall' in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are handmaid of justice and not its mistress. In the present context, the strict

interpretation would defeat justice.”

The period of 90 days as prescribed under Order 8 Rule 1 CPC is not mandatory but only directory and the Court has the power to extend the time for adequate reasons disclosed for not filing the written statement. The petitioners may adopt such a course by filing the application to set aside the order and filing a written statement alongwith an application explaining the reasons as to why the statement could not be filed with time. If such an application is filed, the trial Court itself will pass appropriate order in accordance with law.

The civil revision petition is disposed of with above observations.

18.05.2015
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(K.KANNAN)
JUDGE