

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

Date of decision:08.01.2015

Naresh Kumar

.....Petitioner

v.

Ram Rati and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JASWANT SINGH

Present:- Mr.Amit Shivnarain,Advocate for the petitioner.
None for the respondents.

Jaswant Singh,J.(Oral)

Petitioner/defendant no.2 is in revision under Article 227 of the Constitution aggrieved by the order dated 19.3.2009 passed by Additional Civil Judge (Senior Division) Jhajjar, whereby in a suit for declaration and permanent injunction his defence was struck off for not filing written statement, as also the order dated 18.3.2014 passed by Civil Judge (Junior Division)Jhajjar, whereby his application dated 21.10.2009 for recalling the order 19.3.2009 was dismissed.

This Court vide order dated 6.5.2014 had issued notice to respondent nos.1 to 4/plaintiffs for 27.5.2014 and in the meanwhile trial Court was directed to adjourn the case beyond the date fixed before this Court.

As per office report dated 24.5.2014 respondents have been served through their counsel. However, none has put in appearance on

their behalf.

It is submitted by the learned counsel for the petitioner that in the title suit set out by the respondent/plaintiffs (daughters) qua the property of their father-Dharma challenging the registered release deed executed by said Dharma/defendant no.1 in favour of defendant no.2/petitioner (adopted son), the actual delay caused in filing the written statement is just 17 days over and above the extendable period of 90 days from the date of appearance for the first time on 3.12.2008. It is further submitted that the evidence of the plaintiffs (daughters) is yet to commence as the issues itself have been framed on 8.4.2014 and thereafter this Court vide order dated 6.5.2014 directed the trial Court to adjourn the case beyond the date fixed before this Court and the said order is still in operation. Accordingly, prayer is made for one last opportunity to file the written statement in the interest of justice so as to effectively decide the *lis* between the parties.

A perusal of the averments made in the revision petition, which have gone undisputed, shows that petitioner/defendant no.2 after service appeared for the first time on 3.12.2008 and the case was adjourned to 9.2.2009 for filing of written statement and reply to the injunction application. Since 9.2.2009 was holiday the case was taken up on 10.2.2009 and adjourned to 19.3.2009 for filing of written statement and reply. On 19.3.2009 the impugned order striking defence of the petitioner/defendant no.2 was passed and the case was adjourned to 27.4.2009 for service of remaining defendants. It is thus apparent

that defence of petitioner/defendant no.2 has been struck off for not filing written statement within a period of a little more than three months from the date of first appearance on 3.12.2008.

Similarly while passing the impugned order dated 18.3.2014 whereby application of the petitioner/defendant to recall the order dated 19.3.2009 was dismissed, the learned trial court has cited the reason as curtailing the delay in disposal of the suit.

In the facts and circumstances of the case, in my opinion, the impugned orders dated 19.3.2009 and 18.3.2014 are liable to be set aside.

It is well settled that though obligation is cast on the defendants to file their written statement within the stipulated period, however, in the endeavour to expedite the hearing and disposal of the suits, the interests of defendants should not be sacrificed by denying them a right to put up their defence. In given cases on payment of compensatory costs and to meet the ends of justice, the Courts have the power to grant extension of time for filing the written statement. Reliance in this regard can be placed upon **Kailash v. Nankhu and others 2005(4) SCC 480** and **Shaik Salim Haji Abdul Khyamsab v. Kumar and others 2006(1) SCC 46**, wherein it has been held that the time limit of 30 days as prescribed under Order 8 Rule 1 CPC is directory in nature being in the realm of procedural law.

For the reasons stated above, I deem it expedient in the interest of justice to grant the petitioner/defendant one last opportunity

to file his written statement.

Accordingly, present revision petition is allowed, the impugned orders dated 19.3.2009 (P-3) and 18.3.2014 (P-8) are set aside and petitioner/defendant no.2 is granted one last opportunity to file his written statement within a period of two weeks from the date of receipt of certified copy of this order. The trial Court is directed to proceed further in accordance with law.

08.01.2015
joshi

(Jaswant Singh)
Judge