

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 3455 of 2015
Date of Decision: 19.5.2015.**

Babu Ram and others

.....Petitioners

Versus

Darshana Makkar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Rahul Rampal, Advocate
for the petitioners.

Mr. Daldeep Singh, Advocate
for respondent No. 1.

SABINA, J.

Petitioners have filed this petition under Article 227 of Constitution of India challenging the order dated 2.2.2015 whereby defence of the petitioners, was struck off.

Learned counsel for the petitioners has submitted that petitioners are undergoing sentence qua commission of offence punishable under Section 302, 307, 34 of the Indian Penal Code, 1860 in FIR No. 98 dated 21.6.2013, registered at Police Station City Kharar. Plaintiffs have filed suit for recovery of damages on account of murder of Sanjiv Kumar. Learned counsel for the petitioners has further submitted that since the petitioners were in custody, they could not file their written statement within the stipulated period, although, sufficient opportunity had been granted to them to file their written statement. After the passing of

the order, petitioners No. 1 and 2 were granted parole for a month and petitioner No. 3 was ordered to be released on bail and at that stage, they came to know that their defence has been struck off. One opportunity be granted to the petitioners to enable them to file their written statement as they could not file the same within the stipulated period as they were confined in jail.

Learned counsel for respondent No. 1, on the other hand, has opposed the petition.

In the present case, although, sufficient opportunity was granted to the petitioners to enable them to file their written statement but it appears that they could not do so within the stipulated period as they were confined in jail. After the passing of the impugned order, petitioner No. 3 has been ordered to be released on bail. Presently, petitioners No. 1 and 2 have been granted parole. Hence, if one opportunity is granted to the petitioners to enable them to file their written statement, the *lis* between the parties will be disposed of on merits.

Accordingly, this petition is allowed. Impugned order dated 2.2.2015 is set aside. Trial Court is directed to grant one opportunity to the petitioners to enable them to file their written statement subject to payment of ₹ 5,000/- as costs. Costs be disbursed to the plaintiffs. Thereafter, the Trial Court shall proceed further with the case, in accordance with law.

**(SABINA)
JUDGE**

May 19, 2015
Gurpreet