

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

CR No. 3796 of 2015 (O&M)

Date of decision : 29.5.2015

Mahipal Singh

.. Petitioner

versus

Deshraj and another

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Shashi Kumar Yadav, Advocate, for the petitioner.

Rajesh Bindal, J.

In the present petition, the challenge is to the order dated 19.5.2015 passed by the learned court below, whereby on account of non-filing of written statement by the petitioner/ defendant, his defence was struck off.

The proceedings in the present case arise out of a suit filed by the respondents /plaintiffs against the petitioner for possession by way of specific performance of agreement to sell dated 11.1.2012.

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 in the suit was issued to the petitioner. He appeared first time before the court below on 27.2.2015 on which date, the case was adjourned to 1.4.2015 for filing written statement by the petitioner. As on 1.4.2015, counsel for the petitioner could not prepare the written statement, the case was adjourned to 27.4.2015, on which date it was again adjourned to 19.5.2015. On 19.5.2015, counsel for the petitioner prepared the written statement and reply to the application for stay and asked the petitioner to sign the same, however, he did not come. On 19.5.2015, counsel for the petitioner prayed for time to file the same, however, the learned court below struck off his defence. It was submitted that written statement and reply to the application

are ready, however, the same could not be filed, as could not be signed by the petitioner. It was submitted that delay in filing the written statement was not intentional. The prayer is that order dated 19.5.2015 striking off defence of the petitioner be set aside and one opportunity be granted to file the written statement. The case is fixed for 6.7.2015. 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. In the case in hand the delay is not much.

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 6.7.2015 with copy in advance to counsel for the respondents/ plaintiffs, subject to payment of ₹ 5,000/- as costs to be paid equally i.e. ₹ 2,500/- to each plaintiff by way of demand draft. The respondents/ plaintiffs 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. The case will remain fixed for the same purpose for which it had been adjourned. If aggrieved, the respondents / plaintiffs shall have right to file application for recalling the aforesaid order.

The petition stands disposed of accordingly.

29.5.2015
vs

(Rajesh Bindal)
Judge