

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

CR No. 4022 of 2015 (O&M)

Date of decision : 1.7.2015

Gurinder Singh

.. Petitioner

versus

Kharaiti Lal and another

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Baldev Singh Sidhu, Advocate, for the petitioner.

Rajesh Bindal, J.

In the present petition, the challenge is to the order dated 7.5.2015 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 no. 2 for recovery of ₹ 75,00,000/-.

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 disposal of the present petition but the suit as well.

Learned counsel for the petitioner submitted that after service of notice in the suit, petitioner appeared first time before the court below on 4.12.2014 on which date, the case was adjourned to 5.1.2015 for filing written statement by the petitioner. Thereafter, the case was adjourned for producing the documents by the plaintiff on the application filed by defendant no. 2. On 3.4.2015, the case was again adjourned to 21.4.2015 for filing of written statement. On 21.4.2015, the case was adjourned to 7.5.2015, on which date as counsel for the petitioner could not reach court in time, the clerk of the court noted the next date as 28.5.2015. It was submitted that on 7.5.2015 the written statement was ready. However, the petitioner and his counsel did not have any knowledge about the passing of the impugned order dated 7.5.2015 by the learned court below striking

off his defence. It was submitted that written statement is ready, however, the same could not be filed, as counsel for the petitioner could not reach Court in time on 7.5.2015. It was submitted that delay in filing the written statement was not intentional. The prayer is that order dated 7.5.2015 striking off defence of the petitioner be set aside and one opportunity be granted to file the written statement. The case is fixed for 28.7.2015. 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 the reason given by the petitioner for not filing written statement in time to be genuine. 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 within one week from today with copy in advance to counsel for respondent no.1/ plaintiff, subject to payment of ₹ 10,000/- as costs to be paid to the plaintiff by way of demand draft. The respondent/plaintiff shall file replication, if any, on or before next date fixed in the court below. The issues, if required, may be reframed keeping in view the stand of the petitioner/defendant no. 1 in the written statement and the replication, to be filed. The case will remain fixed for the same purpose for which it had been adjourned. If aggrieved, respondent no.1/ plaintiff shall have right to file application for recalling the aforesaid order.

The petition stands disposed of accordingly.

1.7.2015
vs

(Rajesh Bindal)
Judge