

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

Civil Revision No. 4172 of 2015 (O&M)

Date of decision : 7.7.2015

Harjinder Singh

... Petitioner

VS

Tara Singh and others

... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. RVS Chugh, Advocate, for the petitioner.

Rajesh Bindal, J.

In the present petition, the challenge is to the order dated 12.5.2015 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 nos. 2 to 5 for declaration and mandatory injunction.

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, the petitioner appeared first time before the court below on 11.7.2014 on which date, the case was adjourned to 6.8.2014 for filing written statement by the petitioner. Thereafter, the case was adjourned for service of unserved defendant No.2. On two dates of hearing i.e. on 12.2.2015 and 17.3.2015, the Presiding Officer was on leave and the case was adjourned to 12.5.2015 on which date, as the petitioner could not file the written statement due to the reasons beyond his control, the defence of

the petitioner was struck off. It was submitted that delay in filing the written statement was not intentional. It was submitted that written statement is ready. The evidence of the plaintiff is yet to start. The prayer is that order dated 12.5.2015 striking off defence of the petitioner be set aside and one opportunity be granted to file the written statement. The case is fixed for 9.7.2015 for filing replication by the plaintiff to the written statement filed by other defendant. 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. The case is at the stage of filing replication.

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 the date fixed i.e. 9.7.2015 with copy in advance to counsel for respondent no.1/ plaintiff, subject to payment of ₹ 5,000/- as costs to be paid to the plaintiff by way of demand draft. If aggrieved, respondent no.1/ plaintiff shall have right to file application for recalling the aforesaid order.

The petition stands disposed of accordingly.

7.7.2015
vs

(Rajesh Bindal)
Judge