

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

**Civil Revision No.5712 of 2015 (O&M)
Date of decision: 02.09.2015**

Ranbir Kaur Kang

.....Petitioner

Versus

Manjit Kaur Sidhu and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. K.S. Boparai, Advocate,
for the petitioner.

Ritu Bahri, J.

Challenge in this petition is to the order dated 28.04.2015 (Annexure P-4) passed by the Civil Judge (Junior Division), Ludhiana, whereby application filed by the plaintiff-petitioner under Order 8 Rule 1 CPC for striking off the defence of defendants-respondents, has been dismissed.

The defendants-respondents had appeared before the trial Court on 21.09.2013 and thereafter, made an application for admission and denial of the facts, which was disposed of on 03.02.2014. Thereafter, on 05.08.2014 the present application was filed by the petitioner-plaintiff for striking off the defence of defendants. During the pendency of this application, written statement was filed on 08.09.2014, which was accepted by the trial Court.

Learned counsel for the petitioner has argued that under Order 8 Rule 1 CPC for permitting the defendant(s) to file written statement after expiry of 90 days, the Court has to record the exceptional situation.

For reference, Order 8 Rule 1 CPC is reproduced as under:-

“1. Written statement.- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty day, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

Learned counsel for the petitioner has further argued that the application under Order 8 Rule 1 CPC filed by the petitioner has been dismissed without filing reply by the defendants-respondent.

However, a perusal of the impugned order shows that pursuant to this application, which was filed by the plaintiff-petitioner on 05.08.2014, one opportunity was granted to the defendants-respondents to file written statement. Thereafter, the defendants filed written statement and reply to stay application on 08.09.2015, which was accepted by the Court. Once, the written statement had been accepted by the Court on 08.09.2014, which was filed after a lapse of 90 days, the application of the plaintiff-petitioner under Order 8 Rule 1 CPC has been rightly dismissed by the trial Court vide impugned order (Annexure P-4). The written statement had been taken on record during the pendency of this application from September 2014 to April 2015 and non filing of reply to this application, would not be a ground to strike off the defence of defendants-respondents.

The object of Order 8 Rule 1 CPC is that the Courts, after examining the facts of the case, can extend the period of 90 days for filing the written statement. The Hon'ble Supreme Court in **Mohammed Yusuf Vs. Faij Mohammad and others**, 2009 (3) Supreme Court Cases 513, has examined a case where the High Court had allowed filing of written statement after a period of three years. In those circumstances, it was held

that without assigning any sufficient reasons, the High Court had gone wrong in exercising the supervisory jurisdiction under Article 227 of the Constitution of India.

However, the aforesaid judgment of the Hon'ble Supreme Court is not applicable in the present case as the trial Court after giving an opportunity to the defendants-respondent to file written statement had accepted the same on 08.09.2014. In the present case, application for striking off the defence was moved by the plaintiff-petitioner on 05.08.2014, which was kept pending for reply. At the same time, an opportunity was granted to the defendants-respondents to file written statement, which was filed by the defendants on 08.09.2014. Copies of the same were supplied to the plaintiff-petitioner. Once the written statement was accepted by the Court, the application for striking off the defence was dismissed vide order dated 28.04.2015 (Annexure P-4).

Since in the present case, before the final decision of the application on 28.04.2015, the written statement had been accepted by the trial Court on 08.09.2014, no ground is made out to interfere in the impugned order.

Dismissed.

02.09.2015
ajp

(RITU BAHRI)
JUDGE