

CR No.6510 of 2014

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

**CR No.6510 of 2014
Date of decision:11.02.2015**

M/s Air Control and Chemical Engineering
Company Limited and another

...Petitioners

Versus

S.K.Saini

...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Naveen Sharma, Advocate,
for the petitioners.

None for the respondent.

Rakesh Kumar Jain, J.

The petitioners are aggrieved against the order dated 25.09.2013 by which their defence has been struck off on the ground that they had already availed 4 effective opportunities for filing the written statement and the period of 90 days had already elapsed.

Notice of motion in the present revision petition was issued to the respondent through his counsel appearing in the trial Court. As per office report, the respondent was served and since no-one had put in appearance on his behalf, the case was fixed for arguments.

Learned counsel for the petitioners has argued that the plaintiff-respondent filed a suit for recovery of ₹20 lacs as damages along with interest. The plaintiff made the deficiency of the court fee good on 07.08.2013 and the case was adjourned for three dates i.e. 24.08.2013,

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20.09.2013, 23.09.2013 and then on 25.09.2013, the defence of the petitioners-defendants was struck off. The petitioners then filed an application for re-calling of the order striking of their defence, which was dismissed on 13.05.2014 and hence, the present revision petition.

Counsel for the petitioners has argued that the petitioner is a limited company and engaged Deepak Kumar Tyagi, Advocate of Delhi to defend their case. The written statement was drafted, signed, attested and handed over to Deepak Kumar Tyagi, Advocate on 10.09.2013 for filing it in the trial Court. He assured that he would file it in time. Since the petitioners were not getting satisfactory answer from Deepak Kumar Tyagi, Advocate regarding progress of their case, they engaged a local advocate of Jalandhar, namely, Inderjit Singh Bhatia who informed the petitioners that their defence has been struck off vide order dated 25.09.2013 and on his advice, the application was filed for re-calling of the order dated 25.09.2013 which has also been dismissed on 13.05.214.

Counsel for the petitioners has further argued that the deficiency in the court fee was made good by the plaintiff-respondent on 07.08.2011 and from that date onwards, 90 days for filing the written statement were not elapsed. In this regard, he has relied upon the following judgments:-

- “1. **M/s ION Exchange India Ltd. v. M/s. Satpal Singh Grover**, 2007(1) R.C.R. (Civil) 524;
2. **Radhey Sham and another v. Sat Pal and others**, 2010(4) R.C.R. (Civil) 493; and

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3. **Swarn Ram and others v. Jaimal Ram, 2010(5)**

R.C.R. (Civil) 652.

It is also submitted that the petitioners had solely relied upon his advocate in the trial Court to whom the written statement was handed over for filing in the Court well within time but because of the lapse on his part, it could not be filed in time and as a result thereof, they have lost their right to defend the suit filed by the plaintiff for recovery of ₹20 lacs towards damages. It is also submitted that the prescribed period of 90 days is not mandatory but directory and the Court had the jurisdiction to extend the time.

After hearing learned counsel for the petitioners and examining the available record, I am of the considered opinion that the petitioners can be given one more opportunity to file the written statement in view of the facts and circumstances of the present case as the written statement was allegedly prepared on 10.09.2013 and handed over by the petitioners to their advocate for filing in the Court but somehow the other, it could not be filed and after 3 dates, the Court has passed the impugned order.

In view thereof, the present revision petition is hereby allowed, the impugned orders are hereby set aside and the petitioners are allowed one more opportunity to file their written statement.

February 11, 2015
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(Rakesh Kumar Jain)
Judge