

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

**CR No. 7694 of 2011 (O&M)**

**Date of decision: 03.12.2015**

Desh Raj

... Petitioner

versus

Kishan Chand and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr. Santosh Kumar Sharma, Advocate for the petitioner.

Mr. Rajesh Lamba, Advocate for respondent Nos. 1 to 5.

**K.Kannan, J.**

The 1<sup>st</sup> defendant who had been set ex-parte was allowed the benefit of participating in the proceedings but not allowed to file the written statement. The contention was that he was not served and the plaintiff attempted to prove that there had been actual service of summons and along with him the 3<sup>rd</sup> defendant had also signed. The 3<sup>rd</sup> defendant had no objection to the decree being passed and the 1<sup>st</sup> defendant, therefore, wanted to contend that the plaintiff and the 3<sup>rd</sup> defendant had been colluding together and the Court could not have been acted on the false assertions made by the 3<sup>rd</sup> defendant that summons have been served on him.

This is a suit by a daughter claiming a share to the estate of her father. Defendant Nos. 2 and 3 are the brothers of the plaintiff and the 1<sup>st</sup> defendant is the son of yet another brother. The contention is that the plaintiff's father had died in the year 1950 and the plaintiff was not entitled to any share.

The argument placed before me was that the Court had merely acted on the statement that he had been served and the Court, therefore, presumed that the service must have been on the 1<sup>st</sup>

defendant also. It is soon brought out by the counsel for the respondent that the Court was actually acting on service of summons that bore the signature of the defendant. For the sheer indiscretion of the defendant by remaining ex-parte inspite of service, I allow for written statement to be filed on the condition to the defendant pays costs of Rs. 25,000/- to the plaintiff for allowing the benefit of filing the written statement. The costs shall be paid within two weeks from the date of the receipt of the copy of the order and the statement shall also be filed within the said period. The time shall not be extended for any reason and if the statement is not filed, it shall be deemed to be refused since the mandate of Order 8 Rule 1 CPC that requires the statement to be filed within 90 days has long expired and the extension now granted is to benefit the party in the interest of justice.

The impugned order is set aside and the civil revision petition is ordered on the above terms.

**(K.KANNAN)**  
**JUDGE**

03.12.2015

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