

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

Civil Revision No. 757 of 2015 (O&M)

Date of decision : 13.7.2015

Gurmail Singh

..... Petitioner

VS

Balveer Singh

..... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Kulwant Singh, Advocate, for the petitioner.

Ms. Avinash Mandla, Advocate, for the respondent.

Rajesh Bindal J.

In the present petition, challenge is to the order dated 26.11.2014 (Annexure P-3) passed by the learned court below, whereby on account of non-filing of written statement by the petitioner, his defence was struck off.

The proceedings in the present case arise out of a suit filed by the respondent/ plaintiff against the petitioner for permanent injunction restraining the petitioner/defendant not to dispossess him from the suit property.

Learned counsel for the petitioner submitted that the suit was filed by the plaintiff on 31.7.2014 and notice was issued to the petitioner for 4.8.2014. The petitioner appeared on 4.8.2014 through his counsel and the case was adjourned to 9.10.2014, on which date the petitioner filed application for production of documents. On 29.10.2014, the respondent/ plaintiff supplied the documents and the application was disposed of and the case was adjourned to 19.11.2014 for filing written statement. On 19.11.2014, the written statement could not be filed and the case was adjourned to 26.11.2014. As counsel for the petitioner was having back pain and could not prepare the written statement, he sought time for the same,

however, the trial court vide order dated 26.11.2014 struck off his defence. It was submitted that delay in filing the written statement was not intentional, rather it occurred due to reasons beyond his control. It was further submitted that evidence of the plaintiff is yet to start. The next date of hearing in the suit is 30.7.2015. The prayer is that order dated 26.11.2014 striking off defence of the petitioner be set aside and he be granted one opportunity to file the written statement as the same is ready. 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.

On the other hand, learned counsel for the respondent/plaintiff submitted that the petitioner was granted numerous opportunities to file the written statement but he intentionally did not file the same. Even after supply of documents, two opportunities were granted. The purpose of the petitioner is only to delay the proceedings. The prayer is for dismissal of the present petition.

Heard learned counsel for the parties and perused the paper-book.

A perusal of the paper-book shows that the defendant/petitioner appeared on 4.8.2014 and the case was adjourned to 9.10.2014 for filing of written statement, on which date he filed application for supply of certain documents. The documents were supplied on 29.10.2014 and the case was adjourned to 19.11.2014 for filing written statement, on which date he could not file the same. On 26.11.2014, when his defence was struck off by the learned court below, his counsel was suffering from back pain. I find merit in the contentions raised by learned counsel for the petitioner. 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. Though there is

some small delay in filing of written statement by the petitioner but the same is not inordinate. The reason assigned for delay is that the counsel was suffering from back pain. I deem it appropriate to grant one opportunity to the petitioner to file written statement. The petitioner is permitted to file written statement, with copy in advance to counsel for respondent/plaintiff on or before 30.7.2015 before the learned court below subject to payment of ₹ 5,000/- as costs to the respondent/plaintiff by way of demand draft. The issues, if required, may be modified or reframed keeping in view the stand of the petitioner/defendant in the written statement and replication, if filed, for which opportunity be granted, if sought.

The petition stands disposed of accordingly.

13.7.2015

vs.

(Rajesh Bindal)
Judge