

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

CR No. 8842 of 2014 (O&M)

Date of decision : 10.4.2015

Manjinder Kaur

.. Petitioner

versus

Sarwan Singh

.. Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Rakesh Kumar, Advocate, for the petitioner.
Mr. A. S. Khinda, Advocate, for the respondent.

Rajesh Bindal, J.

In the present petition, the challenge is to the order dated 12.8.2014 passed by the learned court below, whereby on account of non-filing of written statement by the petitioner/ the defendant, her defence was struck off and order dated 13.11.2014, whereby her application filed for review of order dated 12.8.2014 was dismissed.

The proceedings in the present case arise out of a suit filed by the respondent /plaintiff against the petitioner for mandatory injunction. The petitioner is wife of the respondent.

Learned counsel for the petitioner submitted that notice of the suit was issued to the petitioner. She appeared before the court below and filed application for production of documents on 9.5.2014 and the case was adjourned to 26.5.2014 for filing reply to the application as well as for filing written statement. Thereafter, the case was adjourned either on request of the petitioner or the respondent. On 12.8.2014, the learned court below struck off her defence. The application filed by the petitioner for review of order dated 12.8.2014 was also dismissed on 13.11.2014. It was submitted that written statement could not be filed as her application for production of documents was pending, in which the respondent/plaintiff sought time to file reply. She was under the impression that last opportunity was granted to the respondent to file reply. It was further submitted that evidence of the

plaintiff is yet to start. The case is fixed on 24.4.2015 for that purpose. The prayer is that impugned order dated 12.8.2014 striking off defence of the petitioner and order dated 13.11.2014 dismissing the review application be set aside and one opportunity be granted to file the written statement. 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 submitted that sufficient opportunities were granted to the petitioner to file written statement, but she did not file the written statement. The object is only to delay the proceedings. However, he could not dispute the fact that the respondent/plaintiff till date has not filed reply to the application filed by the petitioner for production of document.

After hearing learned counsel for the parties, I find merit in the contentions raised by learned counsel for the petitioner. A perusal of the zimni orders shows that the case was adjourned for filing reply to the application as well as for filing written statement. It is not in dispute that till date no reply to the application filed by the petitioner-wife has been filed. 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.

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 next date of hearing i.e. 24.4.2015 with a copy in advance to counsel for the respondent/ plaintiff.

The petition stands disposed of accordingly.

10.4.2015
vs

(Rajesh Bindal)
Judge