

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

125/1

CR-1172 of 2016

DATE OF DECISION: 16.02.2016.

Anil Kumar and others

...Petitioners.

VERSUS

Nagar Panchayat, Lalru and others

...Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. S.K. Jain, Advocate for the petitioners.

Shekher Dhawan, J. (Oral)

The present petition is against the order dated 26.11.2015 (Annexure P-1) whereby the defence of the petitioner was struck off on account of non filing of written statement within a stipulated period of 90 days.

As per learned counsel for the petitioner, the petitioner had put in appearance before the Court below on 20.07.2015 and because of personal occupation on the part of counsel for petitioner, written statement could not be filed within a stipulated period.

Having considered the submissions made by learned counsel for the petitioner, this court is of the considered view that as per order dated VIII(I) of Code of Civil Procedure, normally written statement is to be filed within a period of 30 days and not later than 90 days from the date of service of summons. However, provisions contained under order VIII(I) is a part of procedural law, it is directory, but extension of time may be allowed if it is needed, to be given in the circumstances which are exceptional, again by reasons beyond the control of the defendant and if grave injustice would

be occasioned, if the time is not extended. Such a view was also taken by Hon'ble Supreme Court in case titled as **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, AIR 2005 SC 3353** and by Bombay High Court in case titled as **Anil Kushabrao Phutane Vs. Madhukar Kushabrao Phutane, AIR 2006 Bom 1.**

In the case in hand also as per plea taken by petitioner there are circumstances beyond the control of petitioner and it is also settled law that parties should not suffer because of the lapse on the part of his counsel. In case the impugned order is not set aside it will be grave injustice to the present petitioner.

In view of the above, the present petition is accepted and order dated 26.11.2015 (Annexure P-1) is set aside and petitioner is given one opportunity to place on file the written statement in this case, before the trial Court subject to payment of costs of ₹5,000/-.

(SHEKHER DHAWAN)
JUDGE

16.02.2016.
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