

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

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**CR-2285 of 2016
DATE OF DECISION: 31.03.2016.**

ICICI Bank Limited

....Petitioner.

VERSUS

Harinder Kaur and others

....Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Sandeep Suri, Advocate for the petitioner.

Shekher Dhawan, J. (Oral)

The present petition is challenge to the order dated 09.11.2015 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 03.08.2015 and the order dated 09.11.2015 was passed by Court below just after 97 days i.e. 7 days more than the stipulated period of 90 days. Undisputedly, written statement could not be filed within the stipulated period.

Having considered the submissions made by learned counsel for the petitioner, this Court is of the considered view that as per Order VIII (1) 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(1) 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 the plea taken by the petitioner there are circumstances beyond the control of the 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 the order dated 09.11.2015 is set aside. The 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

31.03.2016.
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