

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

**CR No.2294 of 2016 (O&M)
Decided on: 31.03.2016**

Gaurav Kumar

....Petitioner

Versus

Mahender Singh

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Sanjiv Gupta, Advocate
for the petitioner.

REKHA MITTAL J. (Oral)

The present petition has been directed against orders dated 11.08.2015 (Annexure P-2) and dated 08.02.2016 (Annexure P-5) passed by the Civil Judge (Junior Division), Sirsa, whereby defence of the petitioner was struck-off for failure to file the written statement and application for re-calling the said order has been dismissed, respectively.

Counsel for the petitioner started the arguments by admitting that counsel representing the petitioner was remiss in filing the written statement on various dates fixed for the purpose. At the same time, it has been argued that the provisions of Order 8 Rule 1 CPC are not mandatory but directory in nature. Another submission made by counsel is that in case the petitioner is not permitted to file the written statement, a serious prejudice is likely to be caused to him for his failure to put up his defence to contest the suit filed by the respondent for possession by way of specific performance of the agreement to sell.

In addition, it is argued that the respondent/plaintiff can well be

compensated with costs for delay attributable to the petitioner and the petitioner would file his written statement on the date already fixed before the trial Court i.e. 07.04.2016. It is further submitted that the trial has not progressed after striking-off defence as none of the witnesses of the plaintiff has been examined till date.

I have heard counsel for the petitioner, perused the records and the orders impugned.

Keeping in view the nature of the order to be passed, the petition is being disposed of without notice to the respondent but he would be at liberty to file an appropriate application in case he has any grievance to express.

The learned trial Court vide order dated 08.02.2016 has expressed its inability to set-aside the order dated 11.08.2015 with the observations that the petitioner was required to file a revision petition before the High Court for an appropriate relief. There is no dispute that the provisions of Order 8 Rule 1 CPC are not mandatory but directory in nature. As per rules of natural justice, there is always endeavor of the Court to provide full opportunity to the parties to put up their case, adduce evidence and advance arguments before either of them are condemned by passing an order affecting the party concern. That being so, it is expedient in the interest of justice that the impugned orders are set-aside and the petitioner is allowed one opportunity to file the written statement subject to payment of costs already imposed by the trial Court and deposit of an amount of Rs.10,000/- with the trial Court well before filing of the written statement that shall be released in favour of the respondent/plaintiff by the Court concerned. The

petitioner shall be entitled to file written statement on the date already fixed before the trial Court i.e. 07.04.2016 and on his failure to do so, the orders impugned would come into operation.

Disposed of accordingly.

31.03.2016
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(REKHA MITTAL)
JUDGE