

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

Civil Revision No.2328 of 2016

Date of decision : 13.05.2016

Namita and another

.....Petitioners

Versus

Charanjit Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. H.S. Oberoi, Advocate for petitioners.

Mr. C.L. Verma, Advocate for respondent No.1.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 15.12.2015 passed by the learned Additional Civil Judge (Senior Division), Phagwara, vide which the defence of the petitioners has been struck off.

2. Learned counsel for the petitioners contended that the petitioners could not file the written statement within time as they were away to Rajasthan as their family member was ill. Though their counsel had prepared the reply but the same could not be signed. He further

contended that the valuable rights of the petitioners are involved in the present suit. They may be granted one opportunity to file the written statement.

3. On the other hand, learned counsel for the respondent No.1 contended that the petitioners have availed number of opportunities to file the written statement. Even the costs were imposed and last opportunity was granted. Thereafter, their defence was struck off. He further contended that no reasonable explanation has been given as to why the written statement could not be filed by the petitioners in the trial Court within the period of 90 days. Thus, he pleaded that there is no illegality in the impugned order.

4. I have duly considered the aforesaid contentions.

5. There is no dispute with the proposition of law that the provision of Order 8 Rule 1 of the Code of Civil Procedure, 1908 requiring the written statement to be filed within 90 days is directory in nature and not mandatory. There is no dispute that the valuable rights of the petitioners are involved in the present case. Learned counsel for the petitioners has argued that the written statement could not be filed within time as the petitioners were away to Rajasthan as their family member was seriously ill. They could not come to sign the written statement, though it was already prepared by their counsel. Learned counsel for the petitioners has sought one opportunity to file the written statement.

6. Thus, in view of the aforesaid circumstances, the present revision petition is hereby allowed. The impugned order dated

15.12.2015 is hereby set aside. The petitioners are granted one opportunity to file the written statement subject to payment of Rs.15,000/- as cost.

7. The case is stated to be fixed before the trial Court on 27.05.2016. The written statement by the petitioners be filed on 27.5.2016 before the trial Court on payment of the aforesaid costs.

13.05.2016
sunil yadav

(DARSHAN SINGH)
JUDGE