

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

C.R. No. 262 of 2016
Date of Decision: January 15, 2016

Bhupinder Singh

... Petitioner

Versus

Jaswant Singh

... Respondent

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

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

Present: Mr. Jasdeep Singh, Advocate
for the petitioner.

Paramjeet Singh, J. (Oral)

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 29.10.2015 (Annexure P/2) passed by learned Civil Judge (Senior Division), Rupnagar, whereby the defence of the petitioner/defendant has been struck off.

Heard.

Learned counsel for the petitioners contends that the defence of the petitioners has been struck off on the ground of delay in filing the written statement. Learned counsel has further contended that one last opportunity may be given to the petitioner to file written statement which is

necessary for just and proper adjudication of the suit.

I have considered the contentions raised by learned counsel for the petitioner.

Through this petition, the petitioner seeks permission for one effective opportunity to file written statement.

It is correct that proviso to Order 8 Rule 10 of CPC lays down that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the Court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order 8 Rule 1 and Rule 10 of CPC, the doctrine of harmonious construction is required to be applied. The effect would be that under Order 8 Rule 10 of CPC, the Court has discretionary power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order 8 Rule 1 of CPC. Moreover, the said provision being rule of procedure has to be held to be directory and not mandatory in nature. This provision has to be applied with some flexibility and not with rigidity or inflexibility. Rules of procedure are handmaid to the administration of justice and are meant to meet the ends of justice and not to thwart or obstruct the same. In **Salem Advocate Bar Association, Tamil Nadu vs. Union of India AIR 2005 Supreme Court 3353**, it has been held by the Hon'ble Supreme Court that in

the facts and circumstances of a given case, more than 90 days can be granted for filing written statement. In the facts and circumstances of this case, this Court is of the considered opinion that ends of justice would be met if one effective opportunity is given to the petitioners to file written statement in trial court on date fixed, subject to costs of Rs.2000/- to be paid to respondent-plaintiff. However, respondent/plaintiff shall also be given an effective opportunity to file replication to written statement of petitioner, if he so desire.

For the reasons stated above, the impugned order dated 29.10.2015 (Annexure P/2) is set aside. The revision petition is disposed of without notice to the respondent with a view to avoid delay and expenses in view of the nature of the order.

Liberty is granted to the respondent to move this Court if he still feel aggrieved against the order.

January 15, 2016
vkd

[Paramjeet Singh Dhaliwal]
Judge