

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2898-2016 (O&M)

Date of Decision:-27.04.2016

Sat Pal

...Petitioner

Versus

Barhma

...Respondent

CORAM: HON'BLE MR.JUSTICE SHEKHER DHAWAN

Present:- Mr. Parminder Singh, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

The present petition is against the order dated 11.12.2015 (Annexure P-2) whereby the defence of the petitioner was struck off on account of non filing of written statement within a stipulated period of 90 days. Subsequently application for recalling was filed and the said application was also dismissed vide order dated 06.04.2016 (Annexure P-3).

As per learned counsel for the petitioner, the petitioner had put in appearance in person before the Court below on 12.08.2015 and thereafter on next date i.e. 11.09.2015 he was represented by his counsel. The written statement was to be filed after obtaining copies of the documents and that process took some time and as such the written statement could not be filed within a stipulated period. It is also submitted that the circumstances are beyond the control of the petitioner.

Having considered the submissions made by learned counsel for the petitioner, this court is of the considered view that as per order 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 view of the circumstances explained by the petitioner, it is a case of hardship and in the interest of justice both the orders dated 11.12.2015 (Annexure P-2) and 06.04.2016 (Annexure P-3) are liable to be set aside especially when the other party can be compensated with costs and that is why even notice has not been issued to the respondent. It is also settled law that parties should not suffer because of the lapse on the part of counsel. In case the impugned orders are not set aside it will be grave injustice to the present petitioner.

In view of the above, the present petition is accepted and orders dated 11.12.2015 (Annexure P-2) and 06.04.2016 (Annexure P-3) are set aside and petitioner is given one opportunity to place on file the written statement in this case, before the trial Court on next date i.e. 03.05.2016, subject to payment of costs of Rs.5,000/-.

April 27, 2016
mohan

(SHEKHER DHAWAN)
JUDGE