

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR-2956-2016 (O&M)

Date of Decision:-28.04.2016

Saroj & others

...Petitioners

Versus

Radha @ Radhey & another

...Respondents

**CORAM: HON'BLE MR.JUSTICE SHEKHER DHAWAN**

Present:- Mr. Sandeep Kumar Sharma, Advocate,  
for the petitioners.

**SHEKHER DHAWAN, J.**

The present petition is against the order dated 23.03.2016 (Annexure P-2) whereby the defence of the petitioners was struck off on account of non filing of written statement within a stipulated period of 90 days.

As per learned counsel for the petitioners, the petitioners had put in appearance in person before the Court below on 23.12.2015 and order was passed on 23.03.2016 that is just after completion of 90 days. It is further submitted that it is settled law that such provisions are directory and not mandatory and a party should not be put to suffer while invoking such provisions if a party has a case for extension of time. It is also submitted that the circumstances are beyond the control of the petitioners.

Having considered the submissions made by learned counsel for the petitioners, 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 petitioners, it is a case of hardship and in the interest of justice order dated 23.03.2015 (Annexure P-2) is 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 respondents. It is also settled law that parties should not suffer because of the lapse on the part of 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 order dated 23.03.2015 (Annexure P-2) is set aside and petitioners are given one opportunity to place on file the written statement in this case, before the trial Court on next date i.e. 09.05.2016, subject to payment of costs of Rs.5,000/-.

**April 28, 2016**  
mohan

**(SHEKHER DHAWAN)**  
**JUDGE**