

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

CR No.3412 of 2016

Date of decision :01.06.2016

Indus Towers Ltd.

..... Petitioner

Versus

Manoj Kumar

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Mr. Saurabh Dalal, Advocate
with Ashok K Bakshi, Advocate
for the respondent.

- 1. Whether Reporters of 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.**

DARSHAN SINGH, J. (Oral)

1. The present revision petition has been preferred against the order dated 22.03.2016 passed by the learned Civil Judge (Jr. Division), Jhajjar, vide which the defence of the petitioner-defendant has been struck off.

2. Learned counsel for the petitioner contended that the written statement was duly prepared by the office of the petitioner-company at Mohali. However, the same got delayed

by sending through courier to Jhajjar. So, the defence of the petitioner was struck off on the ground that period of 90 days has elapsed. He further contended that counsel for the petitioner moved an application for passing the order on the same date i.e. 22.03.2016 on receiving the print out. But, the same was disallowed by the learned trial Court. Thus, he contended that one opportunity may be given to the petitioner to file the written statement.

3. On the other hand, learned counsel for the respondent contended that the petitioner-defendant has not filed the written statement in-spite of availing sufficient opportunities. The period of 90 days had already expired. So, the learned trial Court was fully justified to struck off the defence of the petitioner.

4. I have duly considered the aforesaid contentions.

5. The impugned order shows that learned counsel for the petitioner-defendant has sought an adjournment to file the written statement on the plea that the written statement has been dispatched to him by the Regional Head Office from Hisar, but the same has not been received by him due to some procedural fault. It appears that the learned trial Court has struck off the defence on the ground that the statutory period of 90 days has already elapsed, but the written statement has not been filed. The Hon'ble Supreme Court in case **Kailash**

Vs. Nanhku and Others 2005 (2) RCR (Civil) 379 has laid

down that the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 (for short CPC) prescribing the period of 90 days for filing the written statement is not mandatory. Rather, the same is directory in nature.

6. It further comes out from the record that on the same date i.e. 22.03.2016, learned counsel for the petitioner moved an application before the learned trial Court that he has received the written statement through email and the delay to file the written statement was not *malafide*. The prayer was moved in the application (Annexure P-3) for passing the appropriate order. That application was held not maintainable by the learned trial Court vide second order passed on 22.03.2016 on the ground that the opportunity for filing the written statement by the defendant has already been waived.

7. The aforesaid material on record shows that the delay in filing the written statement has occurred due to the fact that the written statement was to be prepared at the Regional/Head Office and thereafter the same was to be send to the counsel for the petitioner for filing in the Court located at Jhajjar. Filing of the application (Annexure P-3) on the same date by learned counsel for the petitioner along with copy of the written statement received through email shows the *bona fide* on the part of the petitioner. It is not disputed that valuable rights of the petitioner-defendant are involved in

the suit and it should not be deprived of to effectively contest the suit.

8. Thus, keeping in view my aforesaid discussion, the present revision petition is hereby allowed. The petitioner-defendant is afforded one opportunity to file the written statement subject to Rs. 5000/- as costs on the date fixed in the suit before the learned trial Court.

01.06.2016

S.khan

(DARSHAN SINGH)
JUDGE