

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

CR No.4538 of 2016(O&M)

Date of decision:21.7.2016

Babu Ram

....Petitioner

VERSUS

State Bank of India

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Bharat Bhushan Sharma, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against orders dated 16.12.2015 and dated 12.05.2016 to express grievance against striking of defence of the petitioner for want of filing of written statement in a suit filed by the State Bank of India for recovery of Rs.6,63,686.73p.

Counsel for the petitioner has fairly stated that there was remiss on the part of the petitioner to file the written statement on several dates granted by the Court below but in view of the serious consequence likely to ensue due to his failure to file the written statement and defend the proceedings, the petitioner may be allowed one opportunity to file the written statement on the date already fixed i.e. 26.07.2016 when otherwise he is ready to compensate the respondent for the delay attributable to him

I have heard counsel for the petitioner, perused the paper-book and the orders impugned.

Counsel for the petitioner is not in a position to justify failure of the petitioner to file the written statement on various opportunities

granted for the purpose but he has made a mercy plea for allowing him to file the written statement and defend the proceedings. The provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 are directory and not mandatory in nature as has been held by Hon'ble the Supreme Court in Salem Bar Association Tamil Nadu Vs. Union of India, (2005) 6 SCC 344. In case the petitioner is not permitted to file the written statement, the suit would virtually be decided ex parte and the entire effort to engage a counsel to defend the proceedings before the trial Court and in the present revision petition would be rendered nugatory. Counsel for the petitioner has submitted that there is no progress of trial subsequent to closing right of the petitioner to file the written statement as the respondent-Bank is yet to start evidence.

In view of the above, the petitioner is allowed one opportunity for 26.07.2016, the date already fixed before the trial Court for filing of written statement subject to costs of Rs.5,000/- to be deposited in the account of District Legal Services Authority, Karnal.

Disposed of accordingly.

It is pertinent to mention here that the petition has been disposed of without notice to the respondent in order to save it from unnecessary expenses and inconvenience. However, the respondent would be at liberty to file an appropriate application in case it has any grievance to express.

JULY 21, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE