

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

**CR No.4452 of 2014
Decided on: 18.10.2016**

B.G. Agritech Private Limited

....Petitioner

Versus

Jitender Kumar and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Sanjay Vij, Advocate
for the petitioner.

Mr. Avnish Mittal, Advocate
for respondent No.1.

Mr. Shubham Kaushik, Advocate
for respondent No.5.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 20.05.2014 (Annexure P1) passed by the Additional Civil Judge (Sr. Division) Jagadhari, whereby defence of the petitioner has been struck off for non-filing of the written statement.

Counsel for the petitioner has submitted that a serious prejudice is likely to be caused to the petitioner in case he is not permitted to file the written statement and defend the proceedings. It is further argued that no doubt the petitioner was allowed time more than 90 days and the case was adjourned on a number of occasions for filing the written statement but as the trial Court adjourned the case to 04.07.2014 vide impugned order passed on 20.05.2014 for the purpose of filing of written statement by defendants No.1 and 2, the Court should have allowed another opportunity to the present petitioner for filing of the written statement, may be, subject to payment of enhanced

costs. Another submission made by counsel is that the provisions of Order 8 Rule 1 of the Code of Civil Procedure (in short 'CPC') are not mandatory but directory as has been held by Hon'ble the Supreme Court of India in ***“Shaikh Salim Haji Abdul Khayumsab vs Kumar and others”***, 2006 (1) SCC 46. It is prayed that the petitioner may be allowed one opportunity to file the written statement on the date already fixed before the trial Court and he is ready to compensate the other side for delay, if any, attributable to the petitioner.

Counsel for the contesting respondent, on the contrary, has not disputed the settled position in law that the provisions of Order 8 Rule 1 CPC are not mandatory in nature. However, it has been submitted that as the case was adjourned 04 times for filing of written statement and the petitioner was granted last opportunity to file the written statement subject to payment of costs vide order dated 08.05.2014 and the petitioner has failed to avail of that opportunity as well, he has dis-entitled himself to seek indulgence of this Court.

I have heard counsel for the parties and perused the paperbook particularly the order impugned.

Counsel for the parties have not disputed the factual position on record that the case was adjourned on a number of occasions for filing of written statement by the petitioner including the last opportunity granted vide order dated 08.05.2014 as referred to in the impugned order dated 20.05.2014. A reading of the impugned order would make it evident and substantiates plea of the petitioner that on 20.05.2014, the case was adjourned to 04.07.2014 for filing of written statement and reply to injunction application by defendants No.1 and 2.

Keeping in view the serious consequence likely to ensue for the petitioner in case he is not permitted to file the written statement coupled with the factum that as the trial Court has adjourned the case for filing of written statement by other defendants, the proper course in the given circumstances should have been to allow another opportunity to the petitioner to file the written statement, may be, subject to payment of costs. Though, there was remiss on the part of the petitioner in filing the written statement on various dates granted by the Court below but in view of discussion made hereinbefore, the petitioner is allowed one opportunity to file the written statement on the date already fixed i.e. 25.10.2016 but subject to deposit of Rs.10,000/- with the trial Court towards costs well before the date fixed and the same shall be released in favour of the respondent/plaintiff as per rules. Failure of the petitioner to deposit the costs and filing of written statement on the stipulated date shall entail automatic dismissal of the present petition.

18.10.2016*yakub***(REKHA MITTAL)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No