

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

**CR No.5160 of 2016(O&M)**

**Date of decision:11.8.2016**

Jasveer Singh

....Petitioner

VERSUS

Jeevani Devi and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Lal Singh Sandhu, Advocate for the petitioner.

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**REKHA MITTAL, J. (Oral)**

The present petition has been directed against order dated 12.05.2016 (Annexure P-1) passed by Civil Judge (Junior Division), Ellenabad whereby defence of the petitioner has been struck off for want of filing of written statement.

Counsel for the petitioner would contend that the trial Court has struck off defence of the petitioner due to his failure to file written statement within the statutory period of 90 days when otherwise the trial Court is competent to extend that period for another 30 days. The provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 are directory and not mandatory in nature. It is further submitted that a serious prejudice is likely to be caused to the petitioner in case he is not permitted to file the written statement because in that eventuality, suit filed by Jeevani Devi and others would go undefended as defendants No.2 to 4 in the suit are merely perfunctory. It is prayed that one effective opportunity

may be allowed to the petitioner to file the written statement and he would ensure that the written statement is filed before the trial Court on the date fixed i.e. 22.08.2016. Counsel has apprised that subsequent to passing of the impugned order, there is no progress in the proceedings as the respondents/plaintiffs have not adduced any evidence.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

Perusal of the impugned order would indicate that counsel for the petitioner requested for more opportunity to file the written statement but the same was held to be unjustified with the observations that the petitioner has already availed statutory period of 90 days. Nothing has been said by the Court as to why a period of another 30 days cannot be extended in the circumstances of the case. As non-filing of the written statement would result in serious consequence for the petitioner and the procedural technicalities cannot be allowed to stand in the way of substantial justice, it is expedient in the interest of justice that the petitioner is allowed one opportunity to file the written statement on the date already fixed by the trial Court i.e. 22.08.2016 subject to payment of costs of Rs.10000/- to be deposited with the trial Court before the date fixed and the same shall be released in favour of the respondents/plaintiffs as per rules. In case the petitioner fails to file the written statement on the date fixed, the petition shall be deemed to be dismissed.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondents in order to save them from unnecessary expenses and inconvenience. However, the

respondents would be at liberty to file an appropriate application in case they have any grievance to express.

**AUGUST 11, 2016**  
'D. Gulati'

**(REKHA MITTAL)**  
**JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no