

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

112+236

**CR-5252 of 2015 (O&M)
DATE OF DECISION: 16.03.2016.**

Birender Singh

....Petitioner.

VERSUS

Arvind and others

....Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

None for the respondents No.1 to 3.

Shekher Dhawan, J. (Oral)

CM-5251-CII of 2016

Prayer made in the application is for placing on record zimini orders dated 13.04.2015 and 20.05.2015. Same are taken on record.

CM stands disposed of.

CR-5252 of 2015

Petitioner has challenged the order dated 16.07.2015 whereby the defence of the petitioner was struck off on account of non filing of written statement within a stipulated period of 90 days.

Learned counsel for the petitioner submitted that petitioner as a defendant had put in appearance on 13.04.2015 and because of certain unavoidable circumstances written statement could not be filed and the order dated 16.07.2015 was passed just after 94 days and he be allowed to file the written statement and for that purpose one opportunity be given.

Notice of the petition was given to respondents but nobody has put in appearance for respondents No.1 to 3.

Having considered the submissions made by learned counsel for the petitioner, 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 the case in hand also as per plea taken by petitioner there are circumstances beyond his control. It is also settled law that parties should not suffer because of the lapse on the part of his counsel. In case the impugned order is not set aside it will be a grave injustice to the present petitioner.

In view of the above, the present petition is accepted and order dated 16.07.2015 is set aside and petitioner is given one opportunity to file the written statement, before the trial Court subject to payment of costs of ₹5,000/-.

(SHEKHER DHAWAN)
JUDGE

16.03.2016.
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