

Civil Revision No.5403 of 2015

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

Civil Revision No.5403 of 2015

Date of decision: 12.01.2016

Ashok Kumar

....Petitioner

Versus

Baldev Raj

....Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. Parminder Singh, Advocate, for the petitioner.
Mr. B.B. Sharma, Advocate, for the respondent.

PARAMJEET SINGH DHALIWAL, J.

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 11.02.2015 (Annexure P-3) passed by learned Civil Judge (Junior Division), Karnal, whereby defence of the petitioner has been struck off for non-filing of the written statement and the order dated 31.07.2015 (Annexure P-6) passed by learned Civil Judge (Junior Division), Karnal, whereby application for setting aside the order dated 11.02.2015, has been dismissed.

Briefly stated, the facts of the present case are that respondent/plaintiff filed a suit for partition with possession of a shop against the petitioner/defendant. Notice of the suit was issued.

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However, respondent/plaintiff assured that the matter would be settled amicably. In view of the assurance given by the respondent/plaintiff, petitioner did not engage the counsel. Petitioner appeared in Court on 30.08.2014, 01.10.2014, 28.10.2014, 25.11.2014, 23.12.2014 and 20.01.2015. However, respondent/plaintiff kept the petitioner/defendant in dark and kept on pursuing the case. Thereafter, petitioner at his own moved an application for supply of documents to file written statement. Thereafter, petitioner engaged the counsel and came to know that defence of the petitioner had already been struck off vide order dated 11.02.2015. Petitioner/defendant moved an application for setting aside the order dated 11.02.2015, which has been dismissed vide order dated 31.07.2015. Hence, this revision petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contended that delay in filing written statement by the petitioner is not intentional, rather bona fide one. Petitioner could not file written statement due to ill-will of respondent/defendant. The learned counsel further prayed that one opportunity may be given to the petitioner to file written statement which is necessary for proper adjudication of the suit.

On the other hand, learned counsel for the respondent contended that petitioner was fully aware about the stage of the case and he appeared in person on various dates. The application for setting aside the order dated 11.02.2015 was filed to delay the proceedings.

I have considered the contentions of learned counsel for the parties.

Through this petition, the petitioner seeks permission to file written statement. It is correct that proviso to Order 8 Rule 10 of CPC lays down that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the Court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order 8 Rule 1 and Rule 10 of CPC, the doctrine of harmonious construction is required to be applied. The effect would be that under Order 8 Rule 10 of CPC, the Court has discretionary power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order 8 Rule 1 of CPC. Moreover, the said provision being rule of procedure has to be held to be directory and not mandatory in nature. This provision has to be applied with some flexibility and not with rigidity or inflexibility. Rules of procedure are handmaid to the administration of justice and are meant to meet the ends of justice and not to thwart or obstruct the same. In ***Salem Advocate Bar Association, Tamil Nadu vs. Union of India AIR 2005 Supreme Court 3353***, it has been held by the Hon'ble Supreme Court that in the

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facts and circumstances of a given case, more than 90 days can be granted for filing written statement. In the present case, it is specific stand of the petitioner that due to promise given by respondent/plaintiff to settle the matter amicably, the petitioner did not engage counsel for some time though petitioner kept appearing regularly. There is force in the submission of the petitioner. In view of this, this Court is of the considered opinion that ends of justice would be met if the petitioner is granted one opportunity to file written statement in trial court subject to costs. However, respondent/plaintiff shall also be given an effective opportunity to file replication to written statement of petitioner, if she so desires.

For the reasons stated above, the impugned orders dated 11.02.2015 and 31.07.2015 are set aside. Petitioner is granted one opportunity to file written statement, subject to costs quantified at Rs.5,000/- to be deposited with the concerned District Legal Services Authority.

Disposed of.

(Paramjeet Singh Dhaliwal)
Judge

January 12, 2016
R.S.