

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

CR No.5705 of 2016(O&M)

Date of decision:5.9.2016

Subhash Chander Papneja

....Petitioner

VERSUS

Sh. Dev Raj Sharma

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. D.D. Gupta, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 08.04.2016 whereby defence of the petitioner has been struck off for want of filing of written statement.

Counsel for the petitioner would contend that the petitioner put in appearance in the suit through his counsel on 02.12.2015 and the case was adjourned for filing of written statement. On 24.12.2015, an application was filed for production of original documents but the same remained pending till 10.03.2016 and was disposed of vide order (Annexure P-8) and the case was adjourned to 08.04.2016 for filing of written statement, the day on which defence of the petitioner was struck off. It is argued with vehemence that after dismissal of application for production of original documents, the petitioner availed only one opportunity for filing of written statement. It is further argued that in case the petitioner is not permitted to file the written statement, the proceedings would go undefended, causing irreparable loss to the petitioner. Another submission made by counsel is that rules of procedure are handmaid of

administration of justice and are required to be applied to enhance the cause of justice and not to thwart the same. It is prayed that the petitioner may be provided with one opportunity to file the written statement on the date already fixed now.

I have heard counsel for the petitioner, perused the paper-book particularly the various annexures appended with the petition.

The contention raised by counsel for the petitioner that application for production of original documents was disposed of by the trial Court on 10.03.2016 and thereafter the petitioner got only one opportunity to file the written statement is borne out from the zimini orders placed on record. In the impugned order passed by the trial Court, there is no reference to the application for production of documents and disposal thereof vide order dated 10.03.2016. This apart, in case the petitioner who has been pursuing the proceedings by engaging a counsel is not allowed to file the written statement, it would virtually amount to decision of the suit ex parte, despite the petitioner being present in Court. As has been rightly argued by counsel for the petitioner that rules of procedure ordinarily cannot be allowed to stand in the way of substantial justice. In the given circumstances, the petitioner is allowed one opportunity to file the written statement on the date already fixed before the trial Court subject, however, to the condition that in case the petitioner fails to file the written statement on the date fixed, the petition shall be deemed to be dismissed.

For the foregoing reasons, the petition is allowed in the aforesaid terms.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondent in order to save him

from unnecessary expenses and inconvenience. However, the respondent would be at liberty to file an appropriate application in case he has any grievance to express.

SEPTEMBER 5, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no