

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

**CR No.7330 of 2016(O&M)**

**Date of decision:15.11.2016**

Balwinder Singh and another .....Petitioners

VERSUS

Ranjit Singh and others .....Respondents

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

Present: Mr. Pradeep Bajaj, Advocate for the petitioners.

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

The present petition lays challenge to order dated 10.08.2016 passed by the Civil Judge (Senior Division), Ludhiana whereby defence of the petitioners/defendants No.8 and 9 has been struck off for want of filing of written statement.

Counsel for the petitioners has submitted that as the case was adjourned for 10.08.2016 for service of other defendants, allowing another opportunity to the petitioner to file the written statement would not have resulted in delay of the proceedings or prejudice to the respondent/plaintiff. It is further submitted that the case is still pending for procuring presence of defendants No.5 to 7 for 30.11.2016.

Another submission made by counsel is that the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 (in short 'CPC') are directory and not mandatory in nature. It is prayed that the petitioners may be allowed to file the written statement on or before 30.11.2016, may be, subject to terms and conditions imposed by this Court.

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

A plain reading of the impugned order would make it evident that the trial Court has struck off defence of the petitioners for want of filing of written statement despite the fact that the case was adjourned to 12.09.2016 for securing presence of other defendants. As per submissions made by counsel for the petitioners, the case is still pending for service of defendants No.5 to 7. In the given facts and circumstances, it would be in the interest of justice if the petitioners are allowed to file the written statement well before the date fixed i.e. 30.11.2016 with a copy in advance to counsel opposite subject, however, to deposit of costs of Rs.5,000/- with the Legal Services Authority, Ludhiana.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondent/plaintiff in order to save him from unnecessary expense and inconvenience. However, the respondent would be at liberty to file an appropriate application in case he has any grievance to express.

**NOVEMBER 15, 2016**  
'D. Gulati'

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

Whether speaking/reasoned : yes/no

Whether reportable : yes/no