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

CR-7757-2015

Date of decision : 23.05.2016

Manjit Singh

... Petitioner

Versus

Mann Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Pritam Saini, Advocate
for the petitioner.

Mr. Om Pal Singh Tanwar, Advocate
for respondent No.1.

1. Whether reporters of 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?

AMIT RAWAL, J. (ORAL)

The petitioner-plaintiff (defendant in the counter-claim) is aggrieved of the order allowing the application whereby the defence to file the reply to the counter claim has been struck off.

Mr. Pritam Saini, learned counsel appearing on behalf of the petitioner-plaintiff relies upon the judgment of Hon'ble Supreme Court rendered in **“Salem Bar Association, Tamil Nadu V/s Union of India”, 2005 (6) SCC 344**, to contend that the provisions of Order 8 Rule 1 CPC is not mandatory, but directory in nature. He submits that the suit was filed on 11.12.2013 and the counter claim/written statement was filed on 05.03.2014. He further submits that the trial Court vide Order dated

17.03.2015 and on 17.03.2015, the reply to the counter claim was filed, therefore, rigours of Order 8 Rule 1 CPC would not directly apply, much less, the counter claimant ought not to have moved an application for striking out of the defence of the petitioner-plaintiff (defendant in counter claim).

Mr. Om Pal Singh Tanwar, learned counsel appearing on behalf of respondent No.1-defendant-counter claimant, submits that the reply to the written statement/counter claim was filed on 17.03.2015, which is beyond 90 days as per the provisions of Order 8 Rule 1 CPC, therefore, rightly so, the application was moved and it was ordered to be taken off from the file. In support of his contentions, he relies upon the judgment of Hon'ble Supreme Court rendered in **"New India Assurance Co. Ltd. V/s Hilli Multipurpose Cold Storage Pvt. Ltd." 2016(1) RCR (Civil) 367, "Aditya Hotel (P) Ltd. V/s Bombay Swadeshi Sotres Ltd., (2007) 14 SCC 431** and the judgment rendered in **"Sandeep Thapar V/s SME Technologies Private Ltd." 2014(1) CCC 635 (SC)**. He buttressed his arguments by relying upon the ratio decidendi culled out in **"New India Assurance Company Ltd.'s case** (supra), to submit that the question arose as to whether the proceedings initiated under Section 13 (2) of the Consumer Protection Act, 1986 the parties should be given 90 days' time in filing the written statement or only 45 days as prescribed. He submits that there are two different views of Hon'ble Supreme Court i.e. in **"J.J. Merchand and others Vs Shrinath Chaturvedi, 2002 (3) RCR (Civil) 700** and **"Kailash Vs Nanhku and others" 2005(2) RCR (Civil) 379**, and the Larger Bench has already reiterated the view taken by these judgments which shows that rigours of

version of the opposite party which is the time-line and prays that the aforementioned provisions does not apply to the proceedings initiated under Section 9 CPC and as per the ratio decidendi culled out by the Hon'ble Supreme Court in “Salem Bar Association, Tamil Nadu's case, (supra), wherein the provisions of Order 8 Rule 1 have been held to be directory in nature, no harm would be caused to the parties by accepting the reply to the counter-claim being barred by law of limitation. For the sake of brevity, the order dated 18.02.2015 read thus:-

“Today, the case was fixed for reply to the counter claim. However, at this stage an application for filing the duplicate plaint. Now, to come up on 17.03.2015 for filing of the reply to the above said application.

“Reply to the counter claim not filed. Adjournment sought. Heard and same is allowed. Now to come up on 17.03.2015 for filing of the reply to the counter claim, subject to last opportunity. Interim order is continue till then.”

The aforementioned order granted the time to the petitioner to file the reply to the counter claim on 17.03.2015 which was taken into consideration on 17.03.2015. The order dated 17.03.2015 has been reproduced in paragraph No.3 the grounds of petition, which reads thus:-

““Present: Sh. M.S. Lukhi, counsel for plaintiff.\nSh. Chebag Singh, counsel for defendant\nNo.1.\nSh. Ravinder Sangwan, counsel for\ndefendant Nos.2 and 3.

Reply to the application under Order 39 Rule 1 and 2 CPC filed by plaintiff through his counsel. Replication to the written statement cum reply to the counter claim also filed by

the plaintiff through his counsel. Copies given.

Reply to the application for filing to the duplicate plaint filed by defendant No.1. Copy given. At this stage, an application under Order 8 CPC for passing the decree in favour of the defendant Man Singh against Manjit Singh/plaintiff of counter claim according to the prayer made in the counter claim moved by defendant No.1. Copy given. Case is adjourned to 08.07.2015 for filing of reply to the above said application. Arguments on stay application as well as argument on the application for filing to the duplicate plaint shall also be advanced on the date fixed. Interim order is continued till then. Long adjournment is given due to heavy pendency of the said cases.

Sd/-

(Gitanjali Goel)

CJ(JD) KKR 17.03.2015”

Thereafter, an application was filed for striking out of the defence of the defendant in counter-claim. The ratio decidendi culled out in **“Aditya Hotels (P) Ltd.'s case** (supra), in respect of the matter whereby no reasons had been assigned either by the trial Court or by the High Court in setting aside the order striking out of the defence and the subject matter was remitted back.

As regarding the imposition of cost, as per the ratio decidendi culled out in **“Sandeep Thapar's case** (supra), I am of the considered view that once, the respondent was aware of the judgment of Hon'ble Supreme Court rendered in **“Salem Bar Association, Tamil Nadu's case**, (supra) and the factum of the order dated 18.02.2015 granting the time to file the reply/written statement to the counter claim, in my view, filing of

order which ought not to have been done, therefore, I do not deem it appropriate to impose the cost while allowing the revision petition.

For the foregoing reasons, the impugned order is hereby set aside and the application of the defendant-counter-claimant for striking out of the defence/to file reply in counter claim by the petitioner-plaintiff is hereby dismissed.

Resultantly, the revision petition stands allowed.

23.05.2016
yogesh

(AMIT RAWAL)
JUDGE