

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

CR No.7944 of 2016(O&M)

Date of decision:28.11.2016

Prem Singh

....Petitioner

VERSUS

Mahinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Dr. Deepak Jindal, Advocate for the petitioner.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 12.09.2016 passed by the Additional Civil Judge (Senior Division), Karnal whereby defence of the petitioner/defendant has been struck off for want of filing of written statement.

Counsel for the petitioner would contend that though there was lapse on the part of petitioner in failing to file the written statement till 12.09.2016 but a serious prejudice is likely to be caused to the petitioner in case, he is not permitted to file the written statement and defend the proceedings in a suit for specific performance of agreement to sell dated 28.03.2010. It is further submitted that the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 are directory but not mandatory in nature. It is prayed that the petitioner may be allowed one opportunity to file the written statement and he is ready to compensate the other side for delay, if any, attributable to the petitioner.

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

The Court closed right of the petitioner to defend the proceedings with the observations that the statutory period of 90 days has

already expired and the petitioner has failed to file the written statement despite availing several opportunities including last opportunity. Though counsel for the petitioner is not in a position to make out a very good case for finding error in the order but keeping in view the interest of substantial justice coupled with the factum that costs is a panacea for delay, if any, attributable to a litigant, the petition stands disposed of and the petitioner is allowed one opportunity to file the written statement within a period of 10 days from today, subject to the following conditions:-

- 1) The petitioner shall positively file the written statement within a period of 10 days with a copy in advance to counsel opposite.
- 2) The petitioner shall deposit Rs.7,000/- with the trial Court within the aforesaid period and the same shall be released in favour of the respondent/plaintiff as per rules.

Failure of the petitioner to comply with the aforesaid conditions would entail dismissal of the petition.

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

NOVEMBER 28, 2016

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no