

105

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

CR-8143-2016

Date of decision : 03.12.2016

M/s Mutti Commission Agents

... Petitioner

Versus

Shangara Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Supriya Garg, Advocate
for the petitioner.

AMIT RAWAL, J. (ORAL)

Ms. Supriya Garg, learned counsel appearing on behalf of the petitioner-plaintiff submits that in the application filed under Section 144 read with Section 151 of CPC, defence of the petitioner-plaintiff-decree holder has erroneously been struck off on the premise that he had already availed six effective opportunities. In a suit seeking recovery of the amount of ₹ 14,72,087.51, the trial Court decreed the suit, but the lower Appellate Court has modified to the extent of ₹ 11 Lacs. In the interregnum, decree has been executed, but an appeal at the instance of the plaintiff is pending for adjudication in this Court. For the recovery of the excess amount as ordered by the trial Court, an application under Section 144 of CPC has been filed, but in those proceedings, his defence has been struck off, thus, urges this Court for granting one opportunity for filing the reply to the application subject to the conditions which this Court may impose.

She undertakes that the reply will be filed before the next date

of hearing i.e. 05.12.2016.

I have heard the learned counsel for the petitioner and appraised the paper book and of the view that reasoning given by Ms. Supriya Garg, is fair and honest. As per the *ratio decidendi* culled out in the judgment of Supreme Court in “Salem Bar Association Tamil Nadu V/s Union of India” 2005 (6) SCC 344, the provision of Order 8 Rule 1 CPC is directory and not mandatory in nature. The aforementioned view has been reiterated by Hon'ble Supreme Court in “Kailash V/s Nanku” 2005 (2) RCR (Civil) 379.

Accordingly, the impugned order dated 05.10.2016 (Annexure P-1) is hereby set aside and one opportunity is granted to the petitioner subject to the cost of ₹ 2500/-.

Civil Revision Petition is allowed.

A copy of this order be given under the signatures of the Reader attached to this Court.

03.12.2016

Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No