

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

**CR No.8205 of 2016
Decided on: 05.12.2016**

Amrik Singh and others

....Petitioners

Versus

Karnail Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Ms. Neeti Gupta, Advocate
for the petitioners.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 26.10.2016 passed by the Additional Civil Judge (Sr. Division) Guhla whereby defence of the petitioners has been struck-off for want of filing of written statement.

Counsel for the petitioners would submit that as the respondents/plaintiffs filed the suit for declaration and joint possession against the defendants and defendant No.1 had died before institution of the suit, an application for dismissal of the suit on that ground was filed that came to be dismissed by the trial Court on 05.10.2016. It is further submitted that after dismissal of the application, only one opportunity was provided to the petitioners for filing of written statement. Another submission made by counsel is that the proceedings before the trial Court are now pending for notice to the alleged legal representatives of defendant No.1 and the case is fixed for 01.03.2017. It is argued that as on 26.10.2016, the Court adjourned the case for filing an application for impleading the legal representatives of

defendant No.1, allowing another opportunity to the petitioners to file the written statement on the adjourned date would not have delayed the proceedings or caused any prejudice to the respondents/plaintiffs. The last submission made by counsel is that the petitioners may be allowed one opportunity to file the written statement and they are ready to file the written statement within a weeks' time.

I have head counsel for the petitioners, perused the paperbook and the order impugned.

Perusal of the order bears testimony to the fact that on 26.10.2016, the trial Court closed right of the petitioner to file the written statement despite the fact that the case was adjourned to 27.11.2016 for filing an application for impleading the legal representatives of defendant No.1 – Amar Singh (since deceased). Counsel for the petitioners has submitted that the case is now fixed for 01.03.2017 for service of alleged legal representatives of defendant No.1 – Amar Singh. As per the settled position in law, provisions of Order 8 Rule 1 CPC are directory and not mandatory. Taking into consideration the principle of natural justice and fair opportunity coupled with serious consequence likely to ensue for the petitioners in case they are not permitted to file the written statement and defend the proceedings, the present petition is allowed with liberty to the petitioners to file the written statement in the trial Court within a period of 10 days with a copy in advance to counsel opposite. In case the petitioners fail to comply with the aforesaid directions, the petition would be deemed to be dismissed.

Before parting with this order, it is pertinent to mention

that the petition has been disposed of without notice to the respondents No.1 to 4 in order to avoid un-necessary inconvenience and expenses. However, the respondents shall be at liberty to file an appropriate application in case they have any grievance to express.

05.12.2016
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No