

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

CR No.8661 of 2015(O&M)

Date of decision:17.5.2016

Himmat Singh

....Petitioner

VERSUS

Allahabad Bank and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. M.S. Saini, Advocate for
Mr. A.S. Barnala, Advocate for the petitioner.

Mr. Nakul Sharma, Advocate for respondent No.1.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 21.09.2015 passed by the Civil Judge (Senior Division), Moga, whereby defence of the petitioner/defendant No.2 has been struck off for want of filing of written statement.

Counsel for the petitioner would contend that a serious prejudice is likely to be caused to the petitioner in case he is not permitted to file written statement and contest the suit filed by the respondent-Bank for recovery of the suit amount in which the petitioner has been arrayed as defendant being the guarantor for repayment of loan allegedly advanced in favour of Balwinder Singh Chahal – defendant No.1. It is further submitted

that the provisions of Order 8 of the Code of Civil Procedure, 1908 are not mandatory but directory in nature.

Counsel for the contesting respondent has submitted that as the petitioner failed to file written statement despite the case being adjourned four times for said purpose, no fault can be found with the impugned order.

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

A relevant extract from the order dated 21.09.2015 passed by the trial Court reads as follows:-

“Written statement on behalf of the defendant No.2 not filed till today. Mandatory period of 30 days for filing the written statement has also already been elapsed. As such, defence of defendant No.2 is hereby struck off.”

The mere fact that a period of 90 days (wrongly mentioned as 30 days) has elapsed would not automatically operate to strike off defence of the defendant unless the Court applies its mind and records a finding that there is no justification for further extending the period for another 30 days after expiry of initial period of 90 days. Keeping in view the serious implications of failure of the petitioner to file the written statement coupled with the fact that respondent No.1/plaintiff has not attributed any mala fide on the part of petitioner, it is expedient in the interest of justice that the petitioner is allowed one opportunity to file the written statement on the date already fixed before the trial Court.

For the foregoing reasons, the petition is allowed. The impugned order is set aside. The petitioner is provided with one

opportunity to file the written statement on the date already fixed before the trial Court. However, the petitioner shall be liable to pay costs of Rs.10,000/- to be deposited in the trial Court which shall be disbursed in favour of the respondent-Bank, as per Rules.

MAY 17, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE