

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 1612 of 2006**

State of Chhattisgarh Through Secretary (wrongly mentioned as Chief Secretary in the impugned order dated 26.11.2005), Deptt. Of Revenue, DKS Bhavan, Mantralaya, Raipur (Chhattisgarh)

---- Petitioner

Versus

Gurumukh Singh Hora, S/o Shri Amrik Singh Hora, R/o A-1, Sai Nagar, Raipur, Tehsil & Distt. Raipur (Chhattisgarh)

---- Respondent

For Petitioner	:	Mr.Arun Sao, Dy.A.G. with Mr.Ashish Surana, P.L.
For Respondent	:	Mr.Manish Sharma and Mr.Praglabh Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

14/7/2017

1. The petitioner has filed an application under Order 7 Rule 10 of the Code of Civil Procedure for return of the suit. That application was rejected by the trial Court by order dated 2.5.2005 and directed for filing the written statement and fixed the case on 11.5.2005. On 11.5.2005 the petitioner submitted the written statement. In the meanwhile, the respondent filed an objection that written statement has been filed after delay of 5 ½ months, therefore, it should not be taken on record.
2. By the impugned order dated 26.11.2005, the trial Court has declined to take the written statement on record and fixed the case for ex-parte evidence of the plaintiff on 26.12.2005, against which, this writ petition has been filed.
3. Learned Deputy Advocate General appearing for the petitioner would submit that on the date fixed by the trial Court written statement has

been filed and provision contained in Order 8 Rule 1 of the CPC is not mandatory but it is directory and therefore, such an order deserves to be set aside.

4. On the other hand, learned counsel for the respondent would oppose the writ petition.
5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
6. A careful perusal of the order-sheets would show that time was granted by the trial Court up to 2.5.2005 for filing written statement. Once the trial Court has granted time for filing written statement which the respondent accepted, thereafter the trial Court cannot decline to take written statement on record specially when the provisions regarding the time prescribed under Order 8 Rule 1 of the CPC is directory. {See Kailash Vs. Nanhku and others¹ and C.N. Ramappa Gowda Vs. C.C. Chandregowda (dead) by LRS. and another²}.
7. Accordingly, the writ petition is allowed and impugned order is set aside and it is directed that written statement filed by the petitioner be taken on record. Considering the fact that that it is an old matter, the trial Court is directed to expedite the trial of suit and conclude it expeditiously.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-

1 (2005) 4 SCC 480

2 (2012) 5 SCC 265