

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

134

CR-234 of 2017

DATE OF DECISION: 17.01.2017.

Jatinder Singh and others

....Petitioners.

VERSUS

Gurjant Singh and others

....Respondents.

CORAM : HON'BLE MR. JUSTICE (DR.) SHEKHER DHAWAN

Present: Mr. Naresh Jain, Advocate for the petitioners.

Shekher Dhawan, J. (Oral)

The present petition is against the order dated 22.11.2016 (Annexure P-2) whereby the defence of the defendants No.1 to 4 was struck off on account of non filing of written statement within the stipulated period.

The only contention raised by learned counsel for the petitioners is that despite best efforts, defendants No.1 to 4 could not file written statement within the stipulated period. However, the written statement filed on behalf of defendants No.1 and 2 (petitioners No.1 and 2 herein) has already been accepted by the Court below vide order dated 07.12.2016 (Annexure P-3).

Having considered the submissions made by learned counsel for the petitioners, this court is of the considered view that as per order dated VIII(I) of Code of Civil Procedure, normally written statement is to be filed within a period of 30 days and not later than 90 days from the date of service of summons. However, provisions contained under order VIII(I) is a

if it is needed, to be given in the circumstances which are exceptional, again by reasons beyond the control of the defendant and if grave injustice would be occasioned, if the time is not extended. Such a view was also taken by Hon'ble Supreme Court in case titled as **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, AIR 2005 SC 3353** and by Bombay High Court in case titled as **Anil Kushabrao Phutane Vs. Madhukar Kushabrao Phutane, AIR 2006 Bom 1.** It is also settled law that parties should not suffer because of the lapse on the part of their counsel. In case the impugned order is not set aside it will be grave injustice to the present petitioners.

In view of the above, the present petition is accepted and order dated 22.11.2016 set aside and petitioners are given one opportunity to place on file the written statement in this case, before the trial Court subject to payment of costs of ₹10,000/- and the order is being passed without issuing notice to the opposite parties as the only point involved in this case is limited to that extent.

(SHEKHER DHAWAN)
JUDGE

17.01.2016.
komal

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