

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

CR No.2896 of 2017.

Date of Decision: 25.04.2017.

Rajesh Dhanda

....Petitioner.

VERSUS

Allahabad Bank and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Pankaj Gupta, Advocate for the petitioner.

SNEH PRASHAR, J.

Challenge in this petition is to the order dated 21.03.2017 passed by Debts Recovery Tribunal-III, Chandigarh (for short, 'the Tribunal') declining to the petitioner (defendant No.7) a right to file the written statement.

The submissions made by Mr. Pankaj Gupta, learned counsel for the petitioner have been considered.

Learned counsel for the petitioner submits that on the date fixed i.e. 21.03.2017 before learned Tribunal, the written statement on behalf of the petitioner (defendant No.7) was ready but as the petitioner was out of country for one week, it could not be signed by him and for that reason the counsel representing the petitioner requested for an adjournment but learned Tribunal declined his request and closed the right of the petitioner to file written statement. The Original Application (OA) filed by the Allahabad Bank was still at the initial stage, so much so, that the main defendants No.4 to 6 were yet to be served. The petitioner had been

Order I Rule 10 of the Civil Procedure Code. Submitting that the petitioner will lose his right to raise defence in case he is not allowed to file the written statement which will result in irreparable loss to him, learned counsel prays that only one opportunity be allowed to file the same.

From the impugned order dated 21.03.2017, it is apparent that on the said date, except for petitioner (defendant No.7), there was no representation on behalf of any other defendant. Defendants No.1,2,3 and 5 were proceeded against exparte and defendants No.4 and 6 were ordered to be summoned by way of substituted service i.e. by way of publication of notice in two local newspapers circulated in the area where the said defendants were residing. In other words, the OA was still at the initial stage as some of the defendants still remained to be served. To support his contention that on that date the petitioner was out of country for one week, learned counsel has filed photocopy of his Passport (Annexure-P/5), according to which he left India on 19.03.2017 and arrived at New Delhi on 26.03.2017. Since the date of hearing was in between, there is no reason to disbelieve the contention of learned counsel for the petitioner that for want of signatures of the petitioner, the written statement could not be filed by his counsel. Copy of the written statement prepared has been attached with the instant petition.

In **Shaikh Salim Haji Abdul Khaymsab vs. Kumar, 2005(4) R.C.R. (Civil) 823**, Hon'ble Supreme Court has laid down that 'all the rules of procedure are handmaid of justice, the provisions of Civil Procedure Code or any other procedural enactment ought not be construed in a manner which would leave the Court helpless to meet extraordinary situations in ends of justice, processual law is not to be a tyrant but a servant, not an

obstruction but an aid to justice'. It was further laid down that 'a procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice'. Similar is the ratio of law laid down by the Hon'ble Apex Court in **Mahila Ramkali Devi and others Vs. Nandram (D) Thr. LRs and others 2015(5) R.C.R (Civil) 562.**

It is the principle of natural justice that no person should be condemned unheard. The OA is still at the initial stage. In case the petitioner is not allowed to file the written statement, he will have no pleadings to rely upon to set up his defence and adduce evidence to substantiate the same in order to rebut the claim of the opposite party and that undoubtedly will cause serious prejudice his rights. Proper pleadings and evidence adduced by both the parties is always necessary and helpful to the Court in adjudicating the matter in dispute between the parties completely and effectively.

Thus, considering all aspects and to avoid unnecessary delay in the matter, notice to the respondents is not being issued. One opportunity is given to the petitioner to file the written statement, subject to payment of Rs.5000/- as costs which shall be deposited by the petitioner with the Legal Aid Authority. Accordingly, the instant revision petition is allowed.

Only one effective opportunity for filing written statement will be given to the petitioner by learned Tribunal. In case the written statement is not filed on the date fixed, no further opportunity shall be accorded.

25.04.2017.
jitender sharma

(SNEH PRASHAR)
JUDGE

Whether speaking/ reasoned : **Yes/ No**
Whether Reportable : **Yes/ No**