

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

CR No.2952 of 2017

Date of decision: April 26, 2017

Anil Kumar and another

...Petitioners

Versus

Dilbag Rai

...Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. B.D.S. Randhawa, Advocate
for the petitioners.

JASPAL SINGH, J.(ORAL)

Through the instant civil revision petition preferred under Article 227 of the Constitution of India, petitioners have sought setting aside of the order dated 1st March, 2017 (Annexure P-2) whereby the defence of the petitioners/defendants has been struck off.

Undoubtedly, the petitioners/defendants appear before the Court of Additional Civil Judge (Senior Division), Batala on 2nd December, 2016. Since the petitioners/defendants failed to file the written statement within the stipulated period of 90 days, the impugned order has been passed striking off the defence of the petitioners/defendants. The period of 90 days prescribed in the Code of Civil Procedure is not mandatory rather directory in nature and the right to file the written statement should not be scuttle down by the trial Court for the simple reason that the written statement has not been filed within a period of 90 days. The trial Court can *suo motu* on the application filed by the defendants can provide another period of 30 days for filing the written statement.

Adverting to the facts of the case in hand, the striking down of the defence of the petitioners/defendants may adversely affect the rights of the petitioners/defendants thus the other party can be compensated by cost by

giving an opportunity to file written statement.

So, without commenting much upon the impugned order dated 1st March, 2017, it is *set aside* and the trial Court is directed to afford an effective opportunity to the petitioners/defendants to file the written statement and then to proceed to the suit in accordance with law. However, this order shall be subject to the deposit of a sum of Rs.5,000/- as cost with Legal Services Authority, Batala.

Since this order has been passed in the absence of the respondents/plaintiff, if he feels so aggrieved, he shall be at liberty to approach this Court.

April 26, 2017
m. sharma

(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned : **Yes/No**

Whether Reportable : **Yes/No**