

In the High Court of Punjab and Haryana at Chandigarh

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**CR No.3675 of 2016(O&M)
Date of decision:24.7.2017**

M/S VIDEOCON D2H LTD AND ORS

.....petitioners

Versus

SHARVAN KUMAR

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Nitin Ahluwalia, Advocate,
for the petitioners.

Raj Mohan Singh, J.(oral)

Petitioners-defendants have assailed order dated 28.1.2016 passed by Additional Civil Judge (Sr. Divn.) Fatehabad whereby their defence was struck off on account of non filing of written statement within a period of 90 days. The application under Section 151 CPC for grant of an opportunity to file written statement was also dismissed vide order dated 8.4.2015.

Perusal of the record shows that on 25.8.2015, memo of appearance on behalf of the defendants was filed by one Yogesh Gupta, Advocate and the case was adjourned to 23.10.2015. Same thing was repeated on the adjourned date and case was further adjourned to 7.12.2015. Memo of

appearance was again filed by Yogesh Gupta, Advocate without filing the power of attorney and the case was adjourned to 28.1.2016 subject to payment of cost of ₹ 500/-. On 28.1.2016, defence of the defendants was struck off on account of non filing of written statement within a period of 90 days. Apparently, Yogesh Gupta, Advocate did not file any power of attorney on any of the occasion i.e. 25.8.2015, 23.10.2015, 7.12.2015 and 28.1.2016.

Learned counsel for the petitioners submitted that in fact Mr.Mohit Sachdeva, Advocate from Karnal was engaged by the defendants to represent their cause before the Court at Fatehabad. Aforesaid Mohit Sachdeva instructed Yogesh Gupta, Advocate to appear on his behalf. No power of attorney was available with Yogesh Gupta, Advocate on any of the date of hearing as mentioned above. On 28.1.2016, written statement was ready with Mr. Mohit Sachdeva, Advocate, but he could not attend the Court on account of some personal difficulty. On 23.2.2016, written statement was filed along with an application seeking an opportunity for filing the written statement. The indulgence was not shown by the Court and order dated 8.4.2015 was passed.

Provisions in terms of Order 8 Rule 1 CPC is to be construed as directory and in exceptional cases, the Court can extend the time for filing the written statement by recording

satisfaction. Even the defendant can be put to terms including imposition of cost. The parameter on which discretion has to be exercised is based on the conduct of defaulting party. The principles as laid down in ***Kailash vs. Nanhku and others, 2005 (2) RCR (Civil) 379*** can be relied upon in the aforesaid context.

Further the ratio laid down in ***Sita Ram and others vs. Gurbax Singh and others, 2013(4) Law Herald 3436; Sukhjinder Singh @ Sukha vs. Shamsher Singh, 2014(2) Law Herald 1762*** and ***Surinder Mittal vs. Pooja Mittal, 2013 (1) Law Herald 24*** are also to the same effect.

The view expressed in ***Kailash's*** case (supra) was further approved by the Hon'ble Apex Court in ***Sandeep Thapar vs. SME Technologies Private Limited, 2014(1) RCR (Civil) 729***, wherein it was held that the provision in terms of Order 8 Rule 1 CPC does not impose any embargo on the powers of the Court to extend time for filing written statement beyond the period of 90 days, of course under exceptional circumstances.

The proposition held in ***Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353*** was also to the effect that being rule of procedure, the provision has to be treated as directory, even though the same has been couched in a mandatory nature. This provision has to be applied with some flexibility and not with rigidity or inflexibility.

Since the rule of procedure is handmaid and is intended to meet ends of justice, therefore, cause of justice cannot be subverted and cannot be thrown on the threshold of technicalities. The satisfaction of the Court for granting indulgence in terms of extension of time, is *sine qua non* for the relief to be granted to the defendant. The indulgence has been granted by the trial Court on the basis of pendency of litigation between the couple.

In view of above, this revision petition is allowed. Impugned orders are set aside. Petitioners are permitted to file the written statement subject to payment of cost of ₹ 10,000/- to be paid to the respondent before hand. Payment of cost shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

(RAJ MOHAN SINGH)
JUDGE

July 24, 2017
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Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No