

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

CR No.376 of 2016

Date of Decision: 17.08.2017

**Bhim Singh @ Bheem Singh and anotherPetitioners
Vs**

Priyanka and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. A.K.Yadav, Advocate
for the petitioners.

Ms. Bhavna Grewal, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have assailed the order dated 01.12.2015 passed by Additional Civil Judge (Senior Division), Rewari, vide which defence of the defendants was struck off on account of non-filing of the written statement within 90 days.

[2]. Petitioners are defendants No.1 and 2 before the trial Court. Service qua defendants/petitioners was effected on 06.05.2015 and they have already appeared on 17.08.2015. The case was adjourned to 01.09.2015, but no written statement was filed on behalf of the petitioners/defendants. Thereafter, the case was adjourned to 30.10.2015 and 01.12.2015. The status qua filing of written statement remained the same. On account of non-filing of the written statement

within 90 days, the defence of the defendants/petitioners was struck off.

[3]. Perusal of the impugned order reveals that even on 01.12.2015, service qua remaining defendants was incomplete and last opportunity was granted to the plaintiff to serve the unserved respondents by means of *dasti* process. It was only in these circumstances, the defendants/petitioners remained under dilution *and bona fide* impression that the necessary written statement can be filed even after due service of all the defendants.

[4]. In these circumstances of the case, the opposite party can best be compensated with adequate cost for the omission of the defendants in not filing the written statement within stipulated period of 90 days. The Court is to act *ex debito justitiae* when situation is beyond control.

[5]. Provision 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 principles laid down in **Kailash Vs. Nanhku and others, 2005(2) RCR (Civil) 379, 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** can be relied on the aforesaid proposition.

[6]. The conduct of the party has to be co-related in the given situation. The provision, even if, couched in a mandatory language/manner, but still the import of the provision is to be taken to be directory being a procedural mechanism. The provision does not impose any embargo on the powers of the Court to extend time for filing written statement beyond the period of 90 days in exceptional circumstances.

[7]. The proposition held in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, AIR 2005 SC 3353** was explained in the subsequent judgment of Hon'ble Apex Court in **Sandeep Thapar Vs. SME Technologies Private Limited, 2014(1) RCR (Civil) 729**. The provision has to be applied with some flexibility and not with rigidity or inflexibility as the rule of procedure is handmaid and is intended to meet ends of justice. The cause of justice cannot be subverted and cannot be thrown at the threshold of technicalities. However, satisfaction of the Court is *sine quo non* for grant of such an indulgence.

[8]. In view of consideration enumerated in **M/s R.N. Jadi & Brothers and others Vs. Subhashchandra, 2007(2) RCR**

(Rent) 139, the only irresistible conclusion is that all the rules of procedure are the handmaid of justice. The language used in the provision is procedural in nature. The object of prescribing the provision is only to ensure that no party should ordinarily be denied the opportunity of participating in the process of justice dispensation, unless compelled by express and specific language of the statute. The procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice.

[9]. In view of facts and circumstances of the case, the residuary power of the Court to act *ex debito justitiae* can be exercised to meet out the present situation. This revision petition is allowed subject to cost of Rs.10,000/- to be paid to the respondent. The payment of cost shall be the condition precedent for granting the aforesaid indulgence by the trial Court.

August 17, 2017.

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No