

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3785 of 2016(O&M)
Date of Decision: 17.08.2017

Charanjit Singh
Vs

.....Petitioner

Dalbir Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Nakul Sharma, Advocate
for the petitioner.

Mr. Gaurav Kumar, Advocate
for respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has assailed the order dated 24.03.2015 passed by Additional Civil Judge (Senior Division), Batala, vide which the defence of the defendant/petitioner was struck off on account of non-filing of the written statement within 90 days.

[2]. Defendant appeared for the first time in the Court on 03.12.2014 and defence of the defendant was struck off on 24.03.2015.

[3]. While issuing notice of motion on 28.05.2016, following order was passed by the Co-ordinate Bench of this Court:-

"CM No.11589-CII of 2016

For the reasons mentioned in the application, same is allowed. Filing of true typed/certified copies of Annexures P1 and P2 is dispensed with.

CR No.3785 of 2016

Learned counsel for the petitioner submits that the written statement could not be filed within the stipulated period of 90 days as the respondent/plaintiff is a Commission Agent with whom the petitioner has been dealing for a number of years and that efforts were made for a settlement of the matter. It is submitted that an irreparable loss would be caused if the petitioner is not permitted to file written statement and the impugned order dated 24.03.2014 striking off his defence is not set aside. The petitioner may be put to appropriate terms for the delay in the matter. The petitioner also undertakes that in case the petition is allowed, he shall file the written statement before 05.08.2016 i.e., the date fixed before the trial court.

Notice of motion for 26.07.2016.”

[4]. 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.

[5]. 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.

[6]. 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.

[7]. The perusal of the record is suggestive of the fact that defendant appeared in the Court for the first time on 03.12.2014 and after a period of three and half months, defence of the defendant was struck off. In these circumstances of the case, the opposite party can be compensated with adequate cost for the omission of the defendant 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.

[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.

(RAJ MOHAN SINGH)
JUDGE

Prince

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No