

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

**CR No. 3923 of 2016 (O&M)
Date of Decision: August 03, 2017**

Gurbachan Singh

..Petitioner(s)

Versus

Bajinder and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Gunjan Mehta, Advocate
for the petitioner.

Mr. Gaurav Jindal, Advocate for
for respondent no.1.

ANITA CHAUDHRY, J.

This petition has been filed by the defendant aggrieved by the order dated 20.07.2015, vide which his defence was struck off.

The petitioner's claim that the case was noted for 24.07.2015 and when the counsel appeared before the Court only then he came to know that the file had been taken up earlier and the defence was struck off. An application for recall was filed. According to the petitioner same was filed on 24.07.2015. The affidavit appended along with the application does not bear any date of attestation and this fact is also disputed by the other side.

The counsel for the petitioner urges that they may be given one opportunity to file the written statement and they were ready to comply with any condition that may be imposed and the party should not suffer on account of the mistake in noting the date.

The counsel appearing for respondents urges that a wrong fact is being projected and the presence of the counsel representing the counsel is noted in the order and it has not been shown that application was moved on 24.07.2015 itself and the application was rightly dismissed.

With the little material made available and on a reading of the order of the lower Court it is found that the defendants had been given three opportunities to file their written statement and on their failure to avail that opportunity the defence was struck off. The presence of the counsel is recorded in the order on 20.07.2015. If they were not present there would have been a reference to this fact in their application. The trial had been held up for almost two years and I feel that since the matter is still at initial stages, the petitioner should be permitted to file the written statement on payment of Rs.5,000/- as costs. The parties would appear before the lower Court on 18.08.2017. The cost would be paid to the plaintiff and the written statement would be filed on that day. In case, the written statement is not filed then no adjournment shall be granted for filing the written statement for any reason what-so-ever.

The petition is disposed of on the above terms.

(ANITA CHAUDHRY)
JUDGE

August 03, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No