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

**Civil Revision No.4385 of 2017 (O&M)
Date of Decision: 10.07.2017**

SANYUKTA SINGH SHARMA

.....Petitioner

Vs

**ESTATE OFFICE, GREATER MOHALI AREA DEVELOPMENT
AUTHORITY & ORS**

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Manmohan Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 19.05.2017 passed by Civil Judge (Sr. Divn.) Mohali whereby application filed by him for striking off the defence of defendant No.2 was dismissed.

[2]. Plaintiff filed an application under Order 8 Rule 1 read with Rule 10 and Section 151 CPC for striking off the defence of defendant No.2 for non-filing of the written statement along with an application for extension of time for filing written statement on behalf of defendant No.2.

[3]. Learned counsel for the petitioner submitted that

defendant No.2 was served on 16.02.2015 and despite number of adjournments, he did not file written statement. Period of one and a half year has also elapsed, whereas written statement should have been filed at the most within a period of 90 days after initial period of 30 days, regardless of any extension. After expiry of period of 90 days, defendant loses his right to file written statement. Learned counsel relied upon **A. Sathyapal and ors. vs. Smt. Yasmin Banu Ansari and anr., ILR 2004 KAR 1399.**

[4]. Learned counsel further submitted that the application was dismissed by the trial Court by taking note of the defence projected by the defendants. Defendant No.2 had filed an application for setting aside the *ex parte* order dated 27.05.2015 which was dismissed vide order dated 05.08.2016. Plaintiff is the wife of defendant No.2 and a matrimonial case was pending between them on similar facts. Defendant No.2 filed an application for extension of time and the defence would have been disclosed had he filed the written statement at the relevant stage. Written statement was not filed as the defence could have been disclosed leading to some prejudice to the respondent and the non-filing of written statement was claimed to be unintentional.

[5]. Learned counsel further submitted that defendant No.2

is living in USA and has not visited India since 2012. Criminal case is pending in the competent Court and the trial Court while taking note of this defence of the defendant No.2 observed that the written statement has been filed after a lapse of more than a period of 90 days. The aforesaid lapse was on account of criminal case pending between the parties in which plaintiff and her father were to be cross-examined. Father-in-law and wife of defendant No.2 took some time for cross-examination being not available. Though there was delay in filing the written statement, the reason for the said delay was claimed to be pendency of criminal case. The veracity and genuineness of the plea set up by defendant No.2 were considered by the trial Court by allowing defendant No.2 to file written statement with a cost of Rs.1,000/-.

[6]. I have heard the submission made by learned counsel for the petitioner.

[7]. 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 laid down in **Kailash vs. Nanhku and others, 2005**

(2) RCR (Civil) 379 can be relied upon in the aforesaid context.

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

[9]. The conduct of the party was to be co-related in the given situation and the provision was held to be directory, but the same has to be construed to be so in the exceptional situation, subject to the satisfaction of the Court in respect of non-existence of laxity and gross negligence on the part of the defaulting party. 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.

[10]. 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 that period of 90 days, of course under exceptional circumstances.

[11]. 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.

[12]. At this juncture, it cannot be considered that the discretion exercised by the trial Court was based on non-existing grounds, still in the considered opinion of this Court, the trial Court should have awarded cost on the defaulting party i.e. defendant No.2.

[13]. Though there is no scope for interference in the present revision petition, but the cost imposed by the trial Court is ordered to be increased from Rs.1,000/- to Rs.10,000/- to be paid to the plaintiff before hand.

[14]. Payment of cost shall be the condition precedent for granting indulgence by the trial Court pursuant to the impugned order.

[15]. Petition stands disposed of accordingly.

July 10, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No