

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

CR 4611 of 2017

Date of decision:17.7.2017

M/S JS and Company Commission Agent

Petitioner

vs.

Rakesh Kumar

Respondent

Present: Mr. Maninder Singh Bajwa, Advocate.

M.M.S.BEDI,J.

This is defendant's revision petition against order dated 17.11.2016 (Annexure P-2) whereby the defence of the petitioner had been struck off for not filing the written statement. The petitioner filed an application under Order 9 Rule 7 CPC for setting aside the said order but the same has also been dismissed vide order dated 28.3.2017 (Annexure P-5) on the ground that the petitioner is not interested in filing the written statement and he wants to delay the proceedings.

After hearing counsel for the petitioner, it appears that there was no need to file an application under Order 9 Rule 7 CPC as the petitioner- defendant had not been proceeded against ex-parte and rather a request made on behalf of the defendant- petitioner on 9.12.2016 for filing the written statement had been declined though the presence of counsel for defendant- petitioner is not marked on the title of the order dated 17.11.2016. It is a settled principle of law that the requirement to file the written statement within a statutory period of 90 days under Order 8 Rule 1 CPC, is directory and not mandatory and the Court has got jurisdiction to extend the time.

Without expression of any opinion on merits of the case, at this

stage, it transpires that the petitioner being a defendant in the suit for recovery is interested in delaying the proceedings. In case a notice is issued to the plaintiff- respondent, it would not only cause unnecessary harassment but would require him to spend money on the litigation. With an objective to avoid unnecessary harassment to the plaintiff- respondent, I deem it appropriate to dispose of the revision petition *in limine* by granting one opportunity to the petitioner to file the written statement on the next date of hearing i.e. 9.8.2017 as counsel informs that the case is fixed for evidence of the plaintiff- respondent for the said date.

Accordingly, the revision petition is allowed. The impugned order is set aside and the petitioner is granted one opportunity to file written statement on 9.8.2017 along with the cost of Rs.20,000/-. As the order has been passed in the absence of plaintiff- respondent, it is ordered that in case the order is not acceptable to the plaintiff- respondent, it will be open to him to approach this Court for modification of the order. It is ordered that in case the petitioner fails to file the written statement on 9.8.2017 and pay the cost, as ordered herein above, this revision petition will be deemed to have been dismissed

July 17 ,2017
TSM

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether Reportable

Yes/ No