

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.5288 of 2016(O&M)

Date of Decision : 16.11.2017

BEANT KAUR

...PETITIONER

VERSUS

RAJ KUMAR

...RESPONDENT

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr.Gurinderjit Singh, Advocate
for the petitioner.

Mr. P.L.Singla, Advocate with
Mr. Rajan Gupta, Advocate
for the respondent.

B.S.WALIA, JUDGE (ORAL)

[1]. Revision Petition has been filed under Article 227 of the Constitution of India praying for setting aside order dated 11.05.2016 (Annexure P-2) passed by the learned Additional Civil Judge, (Sr. Div.) Jagraon, vide which the defence of the defendant-petitioner was struck off.

[2]. Admittedly, six effective opportunities were granted to the defendant – petitioner to file the written statement and on failure to file the same as also to give sufficient cause for not filing the same, the defence of the defendant-petitioner was ordered to be struck off on 11.05.2016 and the case adjourned for plaintiffs evidence for 01.08.2016. However the revision petition was filed before this Court only on 05.08.2016.

[3]. Learned trial Court observed that even on date of the passing of the impugned order, no plausible explanation had been submitted for not filing the written statement. In the circumstances, the learned trial Court

ordered striking of the defence of the defendant-petitioner and adjourned the case to 01.08.2016 for plaintiffs evidence on his own responsibility.

[4]. The only submission advanced by learned counsel for the defendant-petitioner is that in case the impugned order is not set aside and one opportunity not granted for filing written statement, great prejudice would be caused to the defendant-petitioner. Learned counsel for the respondent on the other hand reiterated the reasoning on which the learned trial court passed the impugned order.

[5]. I have considered the submissions of learned counsel. Although period of 90 days for filing of written statement is directory and the Court has the power to extend the time for filing written statement even beyond said period, yet, the same is subject to the defaulting party assigning sufficient reason for not filing the written statement within the stipulated period of time. Reference in this connection is made to the decision of the Hon'ble Supreme Court in case titled as **Kailash Vs. Nankhu & Ors., 2005 (4) SCC 480**. Relevant extract of the aforementioned decision is reproduced as under:-

41. Ordinarily, the time schedule prescribed by Order 8, Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for asking more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8, Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons

beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

42. *A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the Court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the Court that the prayer was founded on grounds which do exist.*
43. *The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, the defendant shall be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for asking and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.*
44. *However, no straitjacket formula can be laid down except that the observance of time schedule contemplated by Order 8 Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. We hold that Order 8 Rule 1, though couched in mandatory form, is directory being a provision in the domain of processual law.”*

[6]. It is only in the eventuality of the Court being satisfied that sufficient ground has been shown by the defaulting party for not filing the written statement within the stipulated period of time, that the time for filing the written statement can be extended on such terms as are deemed to be just and proper, including by awarding costs. However in no case can the defaulting party be permitted to seek extension of time in case of laxity or gross negligence on its part. Extension of time is only by way of exception and for reasons to be recorded in writing.

[7]. In the case in hand, it has come on record that the defendant-

petitioner had put in appearance before the learned trial Court on 22.12.2015, whereafter six effective opportunities were granted for filing of written statement but despite the grant of aforementioned six opportunities, the defendant-petitioner failed to file the written statement or to submit a plausible explanation for not filing the written statement.

[8] No plausible reason was assigned before the learned trial Court for not filing the written statement within the stipulated period of time despite grant of six effective opportunities nor has any reason been brought out by the petitioner in the hearing before this Court. Although Order 8 Rule 1 of the CPC is directory, yet the fact remains that observance of the time schedule contemplated under Order 8 Rule 1 of the CPC is the rule and departure therefrom an exception. No circumstances have been brought out for bringing the case within the exception clause as no explanation for not filing the written statement despite grant of six effective opportunities having been granted has been given. Resultantly, I do not find any justification for setting aside order dated 11.05.2016.

[10] In view of there being no circumstances warranting interference with the order passed by the learned trial Court, the revision petition is dismissed. No order as to costs.

(B.S.WALIA)
JUDGE

November16, 2017

gyanchand

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No