

CR No.5338 of 2017
Date of Decision: 14.09.2017

Improvement Trust, Ludhiana and another.....Petitioners

Vs

Kulwant Singh and others**Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Kavita Arora, Advocate
for the petitioners.

Mr. Adiya Dassaur, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have assailed the order dated 23.02.2017 passed by Civil Judge (Junior Division), Ludhiana, vide which defence of defendants No.3 and 4 was struck off for want of written statement.

[2]. Perusal of the interlocutory orders on record reveals that defendants No.3 and 4 appeared through their counsel on 28.11.2016. On that very day, the case was adjourned to 06.01.2017 subject to last and final opportunity. On 06.01.2017, the case was further adjourned to 21.01.2017 for filing the written statement by defendants No.3 and 4. This time also the adjournment was given subject to last and final opportunity,

failing which their defence was to be struck off. On 21.01.2017, the same conditions were repeated and the case was adjourned to 23.02.2017 i.e. the date on which the impugned order came to be passed.

[3]. The 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 as per observations made in **A. Sathyapal and others Vs. Smt. Yasmin Banu Ansari and another, ILR 2004 KAR 1399,** defendant loses his right to file written statement.

[4]. The provisions in terms of Order 8 Rule 1 CPC has to be construed as directory and in exceptional cases, the Court can extend the time for filing the written statement by recording its satisfaction. The parameters on which discretion has to be exercised are based on the conduct of defaulting party. 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** can be referred to in this regard.

[5]. The ratio laid down in **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** are also to the same effect.

[6]. 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**. The proposition of law held in **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, AIR 2005 SC 3353** was also to the effect that being a rule of procedure, the provision has to be treated as directory, even though the same has been couched in a mandatory overtone. The provision has to be applied with some flexibility.

[7]. Evidently, the period of 90 days has not yet been completed. Since the rule of procedure is handmaid and is always intended to meet ends of justice, therefore, I deem it appropriate to treat this case to be satisfying the parameters for grant of indulgence by this Court for allowing defendants No.3 and 4 to file written statement. The principle of law of *audi alteram partem* can also be referred to in this regard as no one should be condemned unheard.

[8]. In view of aforesaid, impugned order dated 23.02.2017 passed by Civil Judge (Junior Division), Ludhiana is set aside. Trial Court shall grant one effective opportunity to the petitioners to file written statement subject to payment of cost of Rs.20,000/- to be paid to the plaintiffs in equal proportions. The payment of cost shall be the condition precedent for granting

aforesaid indulgence by the trial Court. After filing the written statement, trial Court shall proceed with the case in accordance with law.

September 14, 2017.

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No