

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

CR No.6279 of 2017

Date of Decision: September 15, 2017

Jasneet Inder Kaur

..... Petitioner

Versus

Bimla Paitka and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Prateek Gupta, Advocate
for the petitioner.

DEEPAK SIBAL J. (ORAL)

Through the present petition filed under Article 227 of the Constitution of India, challenge has been made to order dated 06.01.2017 passed by the Rent Controller, Chandigarh (Annexure P-1) through which an application filed by the petitioner under Order 8 Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'the Code') was dismissed. Order dated 10.07.2017 (Annexure P-2) through which the petitioner's application seeking review of the aforesaid order dated 06.01.2017 was dismissed, is also impugned.

The petitioner had filed an ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') seeking therein the ejectment of the respondents on the grounds mentioned therein. In pursuance to the notice issued in such petition, the respondents had appeared before the Rent Controller, Chandigarh but since they did not file their written statement within 90 days, an

application under Order 8 Rule 1 of the Code was preferred by the petitioner seeking to strike off the respondents' defence which through the impugned order was dismissed. The petitioner then sought a review of the aforesaid order which was also dismissed.

Learned counsel for the petitioner submits that it could not be disputed that after the respondents had put in appearance before the Rent Controller, Chandigarh, they did not file their written statement within 90 days and for not doing so, no reasonable explanation has been offered by them. Thus, as per the mandate of law, the petitioner's application filed under Order 8 Rule 1 of the Code should have been accepted by the Rent Controller, Chandigarh, resulting in the striking off of the respondents' defence.

The afore submissions made by learned counsel for the petitioner do not merit acceptance.

Order 8 Rule 1 of the Code reads as under:-

ORDER VIII

(WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM)

“1. Written statement:- The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

While interpreting Order 8 Rule 1 of the Code, the Apex Court in ***Zolba vs. Keshao and others - (2008) 11 SCC 769*** has held

as under:-

13. Considering the facts and circumstances of the present case and the statements made in the application for condoning the delay in filing the written statement, we are not in a position to hold that the appellant was not entitled to file the written statement even after the expiry of the period mentioned in the proviso to Order 8 Rule 1 of the CPC. After reading the provisions, in particular the proviso to Order 8 Rule 1 of the CPC, we are unable to hold that the provisions under Order 8 Rule 1 are mandatory in nature.
14. *In Salem Advocate Bar Assn. v. Union of India*, it has been clearly held that the provisions including the proviso to Order 8 Rule 1 of the CPC are not mandatory but directory. It has been held in that decision that the delay can be condoned and the written statement can be accepted even after the expiry of 90 days from the date of service of summons in exceptionally hard cases. It has also been held in that decision that the use of the word "shall" in Order 8 Rule 1 of the CPC by itself is not conclusive to determine whether the provision is mandatory or directory. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the decision in that case, the same can be construed as directory. In paragraph 21 of the said decision, this court observed as follows: (SCC p.364, para 20)
“20. The use of the word 'shall' in order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it.

Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are hand- maid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

15. Therefore, following the principles laid down in the decision, as noted hereinabove, it would be open to the court to permit the appellant to file his written statement if exceptional circumstances have been made out. It cannot also be forgotten that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Therefore, unless compelled by express and specific language of the statute, the provisions of Order 8 Rule 1 of CPC or any procedural enactment should not be construed in a manner, which would leave the court helpless to meet extraordinary situations in the ends of justice.

(emphasis supplied)

As per the afore-quoted portion of the judgment, the Apex Court in *Zolba's* case (*supra*) has held that the provision under Order 8 Rule 1 of the Code are directory in nature and that even after 90 days of appearance, it would be open to the Court to permit the defendant in a suit to file his written statement, if exceptional circumstances are made out and while granting such permission, the Court is also not to lose sight of the fact that in an adversarial system like ours, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation and therefore only when compelled, the Court, under Order 8 Rule 1 of the Code would not permit a party to even file its written statement which is sought to be placed on the record beyond a period of 90 days after such party has put in appearance.

The interim orders passed by the Rent Controller, Chandigarh

show that the respondents for the first time had appeared before the Rent Controller, Chandigarh on 04.04.2016 and had filed their written statement on 27.09.2016. It is true that the written statement of the respondents was filed beyond the period of 90 days from the date the respondents had appeared before the Rent Controller for the first time but the interim orders referred to above further reveal that the delay has been fully explained by the respondents as during this period, to enable the respondents to file an effective written statement, they had preferred an application under Order 11 Rule 12 of the Code seeking the production of record pertaining to ejectment proceedings qua the tenanted premises which had earlier been filed by the petitioner against the predecessor-in-interest of the respondents resulting in the matter being compromised. The occupation certificate of the tenanted premises; allotment letter of the tenanted premises and the conveyance deed was also sought. Such application, after notice was considered and disposed of by the Rent Controller, Chandigarh on 31.08.2016 and within 27 days thereafter, the respondents filed their written statement which was permitted to be taken on record.

In view of the above, the delay on the part of the respondents to file their written statement beyond the period of 90 days from the date of their initial appearance, it is not found to be so unreasonable, as to altogether preclude them from putting forth their defence in the judicial proceedings launched against them. To hold otherwise, in the facts of the present case, would be too harsh.

In view of the above, there is no scope for interference in the present petition.

Dismissed.

(DEEPAK SIBAL)
JUDGE

September 15, 2017
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No