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

**Civil Revision No.7146 of 2016 (O&M)
Date of Decision: 13.12.2017**

HARJINDER KAUR AND ANR

.....Petitioners

Vs

JAIMAL SINGH AND ORS

....Respondents

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

Present: Mr. Jasinder Singh Thind, Advocate
for the petitioner.

Mr. G.S. Virk, Advocate for
Mr. G.S. Nagra, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners have assailed the order dated 27.10.2014 passed by the Addl. Civil Judge (Sr. Divn.) Ajnala vide which defence of the defendants No.2 to 4 was struck off on account of non-filing of written statement within a period of 90 days.

[2]. Brief facts are that Jaimal Singh son-in-law of petitioner No.2 filed a suit for declaration to the effect that he was owner of the land to the extent of ½ share in the land measuring 153 *Kanals* 6 *Marlas* on the basis of unregistered Will allegedly executed by Baldev Singh. Defendant No.1 filed her written

statement on 27.10.2014, wherein stand of the plaintiff was controverted. At the instance of defendant No.1, thumb impressions of Baldev Singh appearing on unregistered Will dated 27.12.2006 were compared with his standard thumb impressions. Petitioners appeared on 02.07.2014, but did not file any written statement within 90 days.

[3]. Learned counsel for the petitioners contended that the appearance of the petitioners on 02.07.2014 was the handiwork of the plaintiff himself as he being in fiduciary relationship got power of attorney signed and filed the same in the Court without intimating the petitioners in respect of nature of litigation pending in the Court. Defence of the defendants No.2 to 4/petitioners was struck off on 27.10.2014 i.e. just after 3 months 25 days from their appearance in the Court.

[4]. Learned counsel for respondents No.1 and 2 submitted that plaintiff's evidence is yet to be completed. The case was fixed for 08.11.2016 for cross-examination of the plaintiff witnesses. Since the interim direction was passed by this Court on 04.11.2016, therefore, the entire plaintiff's evidence could not be concluded.

[5]. I have heard the submissions made by learned counsel for the parties.

[6]. In **Kailash vs. Nanhku & Ors., 2005(2) RCR (Civil) 379**, the provisions in terms of Order 8 Rule 1 CPC was held to be directory and in a given case, the Court can extend the time for filing 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 the defaulting party.

[7]. 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) R.C.R. (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 the period of 90 days, of course under exceptional circumstances such a course should be allowed in the interest of justice and in exceptional cases.

[8]. Similar proposition was answered in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353**, wherein it was held by the Hon'ble Apex Court that the provision being rule of procedure has to be treated as directory even though the same has been couched in mandatory overtone. The provision has to be applied with some flexibility.

[9]. In view of facts and attending circumstances of the case, I deem it appropriate to grant one more opportunity to defendants No.2 to 4/petitioners for filing written statement, subject to payment of adequate cost. This revision petition is accordingly allowed. Impugned order dated 27.10.2014 passed by the Addl. Civil Judge (Sr. Divn.) Ajnala is hereby set aside to the extent of striking off the defence of defendants No.2 to 4/petitioners, subject to the payment of cost of Rs.15,000/- to be paid to the plaintiff.

[10]. Payment of cost shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

December 13, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No