

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

CR No.6917 of 2017(O&M)

Date of decision: 7.10.2017

Executive Officer, Municipal Council, MalerkotlaPetitioner

VERSUS

Mohd. Sabar and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ankit Kaushal, Advocate for the petitioner.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 01.07.2017 (Annexure P-1) passed by the Civil Judge (Junior Division), Malerkotla whereby defence of the petitioner/defendant No.2 has been struck off for want of filing of written statement within the stipulated period of 90 days as envisaged under Order 8 Rule 1 of the Code of Civil Procedure, 1908 (in short 'CPC').

Counsel for the petitioner has submitted that in case the petitioner is not permitted to file the written statement, a serious prejudice shall be caused to defend the proceedings in an effective manner. It is further argued that failure to file the written statement on 01.07.2017 was not intentional much less mala fide. To bring home his contention, it is argued that after the summer vacations, 01.07.2017 was the first opening day but as it happened to be Saturday, under a bona fide mistaken impression that the Courts would be closed, written statement was not sent to counsel for filing. It is prayed that the petitioner may be allowed one opportunity to file the written statement though the petitioner is ready to

compensate the respondents/plaintiffs for delay, if any, attributed to the petitioner.

I have heard counsel for the petitioner, perused the paper-book particularly various annexures appended with the petition.

Counsel for the petitioner, in response to a query by the Court, would inform that subsequent to 01.07.2017, there is no progress in the proceedings because application under Order 39 Rules 1 and 2 CPC for grant of interim injunction is still pending consideration.

Taking into consideration the submissions made by counsel for the petitioner coupled with serious consequences likely to ensue in case the petitioner is not permitted to file the written statement and defend the proceedings, the petitioner is provided with one opportunity to file the written statement on the date already fixed i.e. 27.10.2017 subject to the following conditions:-

1. The petitioner shall be entitled to only one opportunity for filing of written statement on the date already fixed i.e. 27.10.2017.
2. A copy of the written statement to be filed by the petitioner shall be supplied to counsel opposite, 10 days prior to the date fixed.
3. The petitioner shall prepare a demand draft of Rs.5000/- in the name of respondents/plaintiffs and the same shall be handed over to counsel for the respondents/plaintiffs on the date fixed.

Failure of the petitioner to comply with any of the aforesaid conditions would entail dismissal of the petition.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondents in order to save them from unnecessary expense and inconvenience. However, the respondents would be at liberty to file an appropriate application in case they have any grievance to express.

OCTOBER 7, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no