

IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

CR No.7342 of 2017

Date of Decision : 26.10.2017

Sardul Singh

... Petitioner

versus

Baljit Kaur and Ors.

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amit Arora, Advocate
for the petitioner.

RAJBIR SEHRAWAT, JUDGE (ORAL)

Counsel for the petitioner relies upon the judgement of the Hon'ble Supreme Court rendered in **2005 (4) RCR (Civil), 823 titled as Shaikh Salim Haji Abdul Khayumsab vs Kumar and Ors.** to contend that the requirement of filing the written statement within 90 days as provided CPC is only directory in nature and not mandatory. The Court can still permit filing the written statement beyond the prescribed time. It is further submitted by the counsel for the petitioner that sufficient cause has been shown before the Courts below in the application and at the time of argument, to permit the defendant to file the written statement. However, the Trial Court has rejected the application only on the ground that the written statement has not been filed within 90 days.

I have heard the learned counsel for the petitioner. Although in the application he has mentioned that he was not well, therefore, he could not appear in the case, however, no document/certificate of illness has been shown to the trial Court. But, the petitioner had further claimed that now he had come present and he want to file the written statement. This shows that the petitioner was ready to file

the written statement at any time subject to the permission granted by the trial Court. However, he has been prevented from filing written statement by dismissing the present application.

As has been held by the Hon'ble Supreme Court a rule of procedure is made only for advancement of substantial justice. It would not be in the interest of justice to exclude the written statement and the defence of the petitioner merely on the ground that he has not filed the written statement within the prescribed 90 days duration, which otherwise has been held only to be directory by the Hon'ble Supreme Court.

In view of the above, the present petition is allowed. The petitioner is granted one opportunity to file his written statement. This however is subject to the condition of payment of Rs.10,000/- as cost, to be deposited with District Legal Services Authority, Tarn Taran.

The petitioner shall file the written statement within one week from the receipt of the certified copy of this order. It is made clear that in case of default no further opportunity shall be granted to the petitioner to file his written statement.

In the above said terms the present petition is disposed of.

26th October, 2017

Manju

**(RAJBIR SEHRAWAT)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No