

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.7686 of 2017(O&M)

Date of Decision: 08.11.2017

Jarnail Singh & ors.

... Petitioners

Versus

Baljit Kaur

... Respondent

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Rishav Jain, Advocate,  
for the petitioners.

**RAJIV NARAIN RAINA, J.(Oral)**

This petition is directed against the order dated 10.7.2017 striking off the defence of the defendants in a suit for specific performance of contract.

Mr. Rishav Jain appearing for the petitioners-defendants submits that the defendants appeared first time upon notice on 04.05.2017 when the case was adjourned to 27.03.2017. The defendants filed power of attorney on 27.03.2017 and the case was adjourned to 10.07.2017. On the said date, the impugned order has been passed precluding the defendants from leading defence evidence. The Civil Judge (Junior Division), Sunam did not do well in striking off the defence on 10.07.2017 without any provocation and merely on the ground that 90 days have been elapsed from the date of appearance. He should have read the judgment in Salem Advocates Bar Association v. Union of India, (2005) 6 SCC 344, which if he had, he may not have passed the order to cause sudden death. The trial Court had the option of imposing

costs or issuing warning to the defendants of last opportunity and fixed a date for filing written statement. He did none of these and therefore, the impugned order cannot be allowed to stand as it will cause a serious miscarriage of justice, especially in the case of a vendor facing a suit for possession by way of specific performance. If the order stands, his property goes without a defence.

To put the picture in its proper frame for the future guidance of the trial court the relevant paragraph from *Salem* case is reproduced below:

“The use of the word 'shall' in Order VIII 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 handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice. In construing this provision, support can also be had from Order VIII Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the Court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the

provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order VIII, the court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order VIII Rule 1. There is no restriction in Order VIII Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to 'make such order in relation to the suit as it thinks fit'. Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1."

As a result, the petition is allowed and the impugned order dated 10.07.2017 is set aside. This is not a fit case to compensate the plaintiff by imposing costs on the petitioners without proper cause or justification. The petitioners will file their written statement(s) in the trial Court by November 20, 2017.

**08.11.2017**  
monika

**(RAJIV NARAIN RAINA)**  
**JUDGE**

*Whether speaking/reasoned*  
*Whether reportable*

*Yes*  
*No*