

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.7706 of 2017

Date of decision: 08.11.2017

Punjab State Power Corporation Ltd. & ors.

....Petitioners

V/S

Roop Singh Gholia

.....Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

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

B.S WALIA, J. (Oral)

1. Challenge in the instant petition is to order dated 18.8.2017 (Annexure P-2) passed by the learned Additional Civil Judge (Senior Division), Sangrur, vide which the defence of the petitioners was struck off on the ground that the written statement had not been filed within stipulated period of 90 days.

2. Learned counsel for the petitioner contends that the impugned order is cryptic and does not take into account that the provision for filing written statement within 90 days is not only directory but also that no reference has been made qua the number of opportunities granted.

3. Learned counsel relies upon the decision of the Hon'ble Supreme Court in **Sambhaji and Ors. versus Gangabai and Ors.(2008) 17 SCC 117** to contend that the period of 90 days for filing the written statement is directory and that on sufficient cause being made out for not filing the written statement within 90 days, time can be extended and the written statement accepted even beyond 90 days. Paragraph No.15 of the aforementioned judgment is reproduced below:

“15. In the instance case the trial court proceeded on the erroneous premises that there was no scope to accept the written statement after 90 days. The High Court by the impugned order held that though it had power, no case was made out to accept the prayer. We have considered the grounds indicated by the appellants seeking acceptance of the written statement filed belatedly. They cannot be considered to be trivial or without substance. In the case of this nature where close relatives are litigants a liberal approach is called for. In the circumstances we set aside the impugned order of the High Court affirming the order passed by the trial court refusing acceptance of the written statement. The matter is not very complex. We request the trial court to complete trial of the suit within the period of six months. The appeal is allowed without any order as to costs.”

4. Learned counsel contends that no doubt a number of opportunities were availed but the written statement could not be filed within the period of 90 days on account of the fact that the written statement had to be filed by the Punjab State Power Corporation Limited and others and the record necessary for preparing the written statement was not available at one place but had to be collected from different

places and the same took time.

5. I have considered the submissions made by learned counsel for the petitioners and am of the view that a liberal approach is called for instead of taking a pedantic approach by shunting out the right of a party to seek adjudication of the dispute on merits. No doubt a period of 90 days has been stipulated for filing written statement, however, as per the decision of the Hon'ble Supreme Court as referred to above, the period of 90 days is directory and the Court is not barred from extending the period for filing written statement beyond the period of 90 days, if sufficient cause is made out. The explanation given by the petitioners constitutes sufficient cause for not filing the written statement within the period of 90 days. In the circumstances, it would be appropriate to permit the petitioner to file the written statement. I am of the view that in the circumstances, the revision petition can be disposed of at the motion stage by granting liberty to the petitioners to file the written statement without issuing notice to the other side.

6. Accordingly, the revision petition is accepted. Order dated 18.8.2017 (Annexure P-2) passed by the learned Additional Civil Judge (Senior Division), Sangrur, is set aside. The petitioners are granted liberty to file the written statement within a period of one week from the date of

receipt of certified copy of the order of this Court.

Revision petition stands disposed of in the aforementioned terms.

November 08, 2017

ps

**(B.S. WALIA)
JUDGE**

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.

