

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 7714 of 2017 (O&M)
Date of Decision: November 08, 2017

Harjinder Singh

..Petitioner

Versus

Harsh Gupta and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vikas Bali, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

The plaintiff has assailed the order dated 28.09.2017, passed by the Civil Judge (Jr. Divn.), Ludhiana who allowed the defendant to file the written statement and dismissed the application filed by the plaintiff filed under Order 8 Rule 1 of Civil Procedure Code.

The plaintiff filed a suit in January 2017 seeking damages from the defendants who had made false and defamatory allegations against him. The defendants could not be served in the ordinary way. Munadi was ordered for 05.04.2017. The Presiding Officer was proceeding on leave on 05.04.2017, the case was taken up a day earlier and adjourned to 05.05.2017. On 05.05.2017 appearance was put in by defendant no.1 while defendant no.2 was proceeded *ex parte*. Defendant no.1 did not file written statement though the matter was

adjourned three times and thereafter last opportunity was granted. The written statement was not even filed on 31.08.2017. An application was moved under Order 8 Rule 1 of CPC. The lower Court adjourned the case giving fortnight's date for filing reply. Neither the written statement nor the reply was filed on that day and the Court gave another opportunity making it clear that no further opportunity shall be granted. On the adjourned hearing i.e. on 28.09.2017, written statement was filed and the application filed by the plaintiff was dismissed as infructuous. On the same day, another application under Order 7 rule 11 of CPC was filed by the defendant and the case was adjourned for its reply.

The plaintiff is aggrieved by the order vide which the lower Court has allowed the defendant to file the written statement beyond the period of 90 days fixed under Order 8 Rule 1 of CPC.

The submission on behalf of the petitioner is that the Provisions of Order 8 Rule 1 of CPC are mandatory and the Court could not have given a period beyond 90 days and there was no application seeking condonation of delay nor any reason was given for not filing the written statement on time and the defence should have been struck off. The counsel refers to ***Randhir Singh Vs. Darshan Singh and others 2012(2) RCR (Civil) 154*** and ***Zolba Vs. Keshao and others 2008(2) RCR (Civil) 869***.

I have considered the submission made on behalf of the appellant and I find no merit in the petition.

The Provisions under Order 8 Rule 1 of CPC do provide a period of 90 days for filing the written statement but the Provisions are not mandatory and are merely directory and it is open for the Court to allow the defendant to file the written statement. The written statement has been filed within a fortnight of the expiry of the limit. Separate application was not required to be filed for condoning the delay. The Court in its wisdom has permitted the filing and the discretion is well exercised. The trial Court did not err in accepting the written statement.

The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

November 08, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No