

CR-8862-2017

Date of Decision: 16.12.2017

Rekha Rani

.....Petitioner

versus

Mohan Lal and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE ANIL KSHETARPAL**Present:** Mr. Munish Gupta, Advocate
for the petitioner.**ANIL KSHETARPAL, JUDGE (ORAL)**

Defendant No.1 is in revision petition against order dated 23.08.2017, striking off her defence on account of non-filing of written statement within the prescribed time.

Learned counsel for the petitioner has brought to my notice a subsequent order passed by the Court dated 14.09.2017, noticing that the written statement was filed on behalf of defendants No.1 and 2, however, the Court ordered that such written statement shall only be considered as a written statement of defendant No.2. The order dated 14.09.2017 reads as under:-

“Learned counsel for defendant No.1 and 2 filed joint written statement on behalf of both the defendants, but record reveals that defence of defendant No.1 has already been struck off, so written statement presented today shall be read as written statement on behalf of defendant No.2 only. Copy supplied. Reader to make necessary action in red ink in written statement. Now to come up on 10.10.2017 for filing replication to written statement of defendant No.2.”

Learned counsel for the petitioner has further submitted that the case was being adjourned for service of remaining defendants and the

counsel remained under impression that the case would be fixed for filing of written statement after the service is complete. Taking into consideration that a joint written statement has already been filed on behalf of respondents No.1 and 2 who are husband and wife, this Court is of the opinion that the orders dated 23.08.2017 and 14.09.2017 deserve to be set aside. Normally, the Court should not strike off the defence of the defendant unless the Court has first explored various other options like last opportunity, imposition of heavy cost etc.

Taking into consideration the facts noticed above, this Court is of the considered opinion that the written statement already filed be read to have been filed for defendants No.1 and 2. In view thereof, the orders dated 23.08.2017 and 14.09.2017 are set aside. This petition is allowed. The trial Court would treat the written statement already filed to be on behalf of defendants No.1 and 2.

However, since this order has been passed without issuing notice, the plaintiff shall be at liberty to move an application, if he so agreed.

(ANIL KSHETARPAL)
JUDGE

16.12.2017

Neha

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No