

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No.995 of 2017.

Date of Decision: 13.02.2017.

Yogesh

....Petitioner.

VERSUS

Hari Stationery Mart

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Prashant Bansal, Advocate for the petitioner.

SNEH PRASHAR, J.

The petitioner is aggrieved of the order dated 19.01.2017 passed by learned Civil Judge (Junior Division), Rajpura by virtue of which the application under Order VIII Rule 1 of the Code of Civil Procedure (for short, "CPC") filed by the petitioner to struck off the defence of the respondent-defendant on the ground that he had failed to file the written statement, was dismissed.

The submissions made by Mr. Prashant Bansal, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner argued that on notice of the suit filed by the petitioner, the respondent appeared through his counsel on 18.01.2016. After taking repeated adjournments, on 05.05.2016 he filed an application under Order VII Rule 11 CPC for rejection of the of the plaint. He filed the said application only because his written statement was not ready despite having availed 90 days' period after his appearance in the case. Only when the petitioner filed an application under Order VIII Rule 1

CPC to struck off his defence that he withdrew the application filed under Order VII Rule 11 CPC and learned trial Court granted him an opportunity to file the written statement. Learned counsel contended that as the stipulated period of 90 days for filing the written statement had expired, his application should have been allowed and the defence of the respondent should have been struck off by learned trial Court.

No doubt, the orders reproduced by the petitioner in his petition indicate that the respondent had appeared before learned trial Court on 18.01.2016 and had failed to file his written statement despite expiry of the stipulated period of 90 days and even the application filed by him to reject the plaint was filed after the lapse of the said period, but the fact remains that the suit filed by the petitioner for recovery of Rs.6,65,832/- is being contested by the respondent. It was mentioned in the impugned order by learned trial Court that counsel for the respondent submitted that he was under the impression that only after decision of the application under Order VII Rule 11 CPC filed by him for rejection of the plaint that he would have to file the written statement. In any case, the application filed by the respondent under Order VII Rule 11 CPC was withdrawn by him, subsequent to which learned trial Court adjourned the case for filing of written statement by him. There may be some irregularity on part of the respondent, but when he has already appeared in the suit and is contesting the same, it would not be judicious to struck off his defence only on technical grounds. The administration of justice requires that both the parties should be given due opportunity to present their case so that controversy between them can be adjudicated upon properly and completely.

Thus, there being no illegality in the impugned order calling for intervention, this petition is dismissed.

(SNEH PRASHAR)
JUDGE

13.02.2017.
jitender sharma

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No