

CR No.1402 of 2018

{1}

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CR No.1402 of 2018

Date of decision:05.03.2018

Dr. Balbir Singh Virk and another

... Petitioners

Vs.

Rajinder Kumar Mangal

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- None.

AMIT RAWAL J. (Oral)

The petitioner-defendants are aggrieved of the impugned order dated 29.11.2017 (Annexure P-1), whereby the defence of the defendants has been struck off on account of the fact that written statement had not been filed within the statutory period of 90 days from the date of service of summons.

The trial Court, in the impugned order noticed that an effort was made to settle the dispute between the parties as per the provisions of Section 89 of Code of Civil Procedure but the same was not opted and two issues were also framed. No other issue arises or pressed by either of the parties. As per the order dated 30.01.2018, respondent-plaintiff did not examine any witness and the suit was adjourned to 14.05.2018 for evidence of the plaintiff.

It has been stated in the petition that an application under Order 7 Rule 11 CPC filed seeking rejection of the plaint on the ground of territorial jurisdiction was allowed by the trial Court, vide order dated 30.07.2017. However, the same was assailed before the Lower Appellate Court in Civil Appeal No.16 of 2016 which was allowed, vide order dated 16.08.2017. Against the aforementioned order, revision petition bearing No.7981 of 2017 was filed before this Court which is pending adjudication and owing to the pendency of the petition, written statement could not be filed.

I have gone through the paper book and the impugned order. The entire focus of the petitioner was upon the revision petition No.7981 of 2017 preferred before this Court against the order dated 16.08.2017. I am of the view that as per the ratio decidendi culled out in the judgment of Supreme Court in ***Salem Bar Association Tamil Nadu Vs. Union of India 2005(6) SCC 344***, the time period of 90 days for filing the written statement as stipulated under Order 8 Rule 1 CPC is directory and not mandatory in nature. The aforementioned view has been reiterated by Hon'ble Supreme Court in ***Kailash Vs. Nanku 2005(2) RCR (Civil) 379***.

For the foregoing reasons, I deem it appropriate to grant one more opportunity to the petitioner-defendants for filing the written statement within a period of one week, subject to payment of costs of ₹5000/- which shall be condition precedent. If the costs is not paid as directed, the order passed already by the court below shall stand restored.

The impugned order is set aside and the revision petition is allowed, dispensing with notice to the respondent.

(AMIT RAWAL)
JUDGE

March 05, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No