

In the High Court of Punjab and Haryana at Chandigarh

205

CR No. 3153 of 2018

Date of decision: 24.8.2018

Sumer Singh

.....petitioner

Versus

Balbir Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Bhavna Grewal, Advocate,
for the petitioner.

Mr. Vijay Sangwan, Advocate
for the respondent.

RAJ MOHAN SINGH, J (oral)

Petitioner has assailed the order dated 29.1.2018 passed by Civil Judge (Sr. Divn.) Narnaul, vide which defence of the defendant was struck off.

A perusal of the order dated 13.12.2017 passed by the trial Court would show that written statement was not filed. Adjournment was granted subject to payment of costs of ₹ 500/-. The case was adjourned to 29.1.2018.

Learned counsel for the petitioner has pleaded that due to wrong recording of date by the defendant-petitioner as 29.4.2018 instead of 29.1.2018, the requisite costs could not be handed over to the counsel for the plaintiff. On 29.1.2018, the counsel also did not pay the said costs from his own pocket.

The defence of the defendant was struck off on 29.1.2018 itself.

Learned counsel for the petitioner submitted that defendant-petitioner was ready to deposit the costs on 29.4.2018 and even written statement was also ready on the said date.

Provision in terms of Order 8 Rule 1 CPC has to be construed as directory and in appropriate cases, the Court can extend the time for filing written statement by recording its satisfaction. Even the defendant can be put to terms including imposition of adequate cost. The parameters on which discretion has to be exercised is based on the conduct of defaulting party. The conduct of the defendant-petitioner as per pleadings of the revision petition can be appreciated in the context of order dated 13.12.2017, whereby the case was adjourned to 29.1.2018 subject to payment of costs of ₹ 500/-. The pleadings made in para No.7 of the revision petition are to the effect that due to wrong recording of date by the defendant-petitioner as 29.4.2018 instead of 29.1.2018, the requisite costs could not be paid to the counsel for the plaintiff.

In **Kailash vs. Nanhku and others**, 2005 (2) RCR (Civil) 379; **Sandeep Thapar vs. SME Technologies Private Limited**, 2014(1) RCR (Civil) 729 and **Salem Advocate Bar Association, Tamil Nadu vs. Union of India**, AIR 2005 SC 3353, it was reiterated that the provision in terms of Order 8

Rule 1 CPC does not impose any embargo on the powers of the Court to extend time for filing written statement beyond the period of 90 days. The provision being rule of procedure has to be treated as directory even though the same has been couched in mandatory overtone. The provision has to be applied with some flexibility.

The reason for non payment of costs has been explained by the petitioner in the context of wrong recording of the date, therefore I deem it appropriate to grant one opportunity to the petitioner to file written statement on the date to be fixed before the trial Court. Moreover, the other party can be compensated with costs.

Consequently, the impugned order is set aside. Petitioner is granted one opportunity for filing written statement on the date to be fixed before the trial Court subject to payment of costs of ₹ 10,000/- to be paid to the plaintiff-respondent.

Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

Petition stands disposed of accordingly.

August 24, 2018

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**Whether reasoned/speaking
Whether reportable**

**(RAJ MOHAN SINGH)
JUDGE**

**Yes/No
Yes/No**