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

**CM No.17273-CII of 2018 in/and
Civil Revision No.3402 of 2018 (O&M)
Date of Decision: 20.08.2018**

**DHARAMBIR YADAV SINCE DECEASED HIS LEGAL HEIRS
AND OTHERS**

.....Petitioners

Vs

HANS RAJ

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Sharmila Sharma, Advocate
for the petitioners.

Mr. Vipin Yadav, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

CM No.17273-CII of 2018

For the reasons mentioned in the application, the zimni
orders pertaining the civil suit are taken on record.

Application stands disposed of.

Main case

[1]. Petitioners have challenged the order dated 20.04.2018
passed by the Addl. Civil Judge (Sr. Divn.) Kosli District Rewari,
whereby defence of the defendants/petitioners was struck off for
want of filing of written statement.

[2]. In compliance to the order dated 31.07.2018 passed by this Court, petitioners have placed on record the interlocutory orders dated 08.11.2017, 08.12.2017, 05.02.2018, 28.02.2018, 20.04.2018 and 08.08.2018 passed by the trial Court.

[3]. On 08.11.2017, the case was simply adjourned for filing written statement. Thereafter on 08.12.2017, 05.02.2018, 28.02.2018 and 20.04.2018 written statement was not filed despite last opportunity afforded to the petitioners on 28.02.2018 with costs of Rs.500/-.

[4]. Learned counsel for the petitioners by referring to the medical record of the wife of learned counsel appearing on behalf of the petitioners before the trial Court submitted that on 20.04.2018, the counsel was in AIIMS New Delhi along with his wife as her wife was being treated for 'LL Rediculopathy'.

[5]. According to learned counsel, the cost was handed over to the counsel, but he could not come to the Court for the aforesaid reason and his presence was marked in routine.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. The provision in terms of Order 8 Rule 1 CPC has to be construed as directory in nature and in appropriate case, the Court can extend the time for filing written statement beyond 90 days. The parameters on which discretion has to be exercised

are based on the conduct of defaulting party.

[8]. It is true that the cost was imposed on 28.02.2018 and the case was adjourned for 20.04.2018. The counsel on behalf of the defendants/petitioners was busy in AIIMS along with his wife, therefore, non-payment of cost and presence of the counsel marked in the order dated 20.04.2018 can be taken to be on explanatory note.

[9]. In view of ratio of **Kailash vs. Nanhku & Ors., 2005(2) RCR (Civil) 379; Sandeep Thapar vs. SME Technologies Private Limited, 2014(1) R.C.R. (Civil) 729** and **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353**, it can be noticed that the provision in terms of Order 8 Rule 1 CPC does not impose any such embargo on the powers of the Court to extend time for filing written statement beyond the period of 90 days, even though the same has been couched in a mandatory overtone.

[10]. For the reasons recorded hereinabove, this revision petition is allowed. Impugned order dated 20.04.2018 passed by the Addl. Civil Judge (Sr. Divn.) Kosli District Rewari is hereby set aside, thereby granting one opportunity to the defendants/petitioners for filing written statement, however subject to payment of costs of Rs.10,000/- to be paid to the plaintiff/respondent in addition to the cost already imposed by

the trial Court.

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

August 20, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No