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

CR No.3613 of 2018 (O&M)
Date of Decision: 28.05.2018

Mam Chand

....Petitioner

Vs

Vinay Prakash

.....Respondent

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

Present: Mr. D.S. Matya, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has assailed the order dated 19.03.2018 passed by Civil Judge (Senior Division), Gurugram, vide which defence of the defendant-petitioner was struck off for non-filing of written statement within a period of 90 days.

Plaintiff-respondent filed a suit for permanent injunction against the petitioner. As per endorsement appearing on the impugned order, civil suit No.31 was filed on 02.03.2017.

Perusal of the impugned order would show that several opportunities were granted to the petitioner for filing written statement and a period of more than 90 days has already elapsed. No written statement was filed. The trial Court has passed the impugned order, striking off the defence of the

petitioner for want of written statement.

I have considered the submissions made by learned counsel for the petitioner.

The provisions of Order 8 Rule 1 CPC has to be liberally construed being directory in nature. In appropriate case, the Court can extend the time for filing written statement by recording satisfaction. Even the defendant can be put to terms including imposition of adequate costs. The parameters on which discretion is to be exercised is based on the conduct of defaulting party.

In **Kailash vs. Nanhku and others, 2005 (2) RCR (Civil) 379**, the aforesaid analogy was reiterated. The trial Court has not adverted to the number of opportunities with reference to any last opportunity or imposition of costs. The view expressed in **Kailash vs. Nanhku and others (supra)**, is further reiterated in **Sandeep Thapar vs. SME Technologies Private Limited, 2014(1) RCR (Civil) 729** and it was held that the provisions 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, of course such power has to be exercised under exceptional circumstances.

In **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353**, similar proposition was

reiterated by the Hon'ble Apex Court with reference to 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.

Since the rule of procedure is handmaid and is intended to meet ends of justice, therefore, I deem it appropriate to consider this case without issuing notice to the respondent as it would further delay disposal of the suit, however, the opposite party can best be compensated with costs of Rs.20,000/- to be paid to the plaintiff before granting indulgence by the trial Court in the aforesaid context.

Consequently, the impugned order is set aside. Petitioner is granted one opportunity for filing written statement subject to payment of costs of Rs.20,000/- to be paid to the plaintiff.

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

Disposed of.

28.05.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No