

111

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

CR No.3637 of 2018

Date of Decision: 29.05.2018

Gram Panchayat Village Janti Kalan

....Petitioner

Vs

Rohtash and another

.....Respondents

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

Present: Mr. Sandeep Parkash Chahar, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has assailed the order dated 16.11.2017 passed by Civil Judge (Junior Division), Sonipat, vide which defence of the petitioner was struck off for non-filing of written statement within a period of 90 days.

Learned counsel for the petitioner contends that the defendant-Gram Panchayat appeared through Sarpanch Jasbir on 11.08.2017 and filed resolution of the Gram Panchayat dated 11.08.2017. The case was adjourned to 14.09.2017 for filing written statement and reply to the stay application. On the adjourned date, the Sarpanch again appeared and sought time to file written statement and reply to stay application and the case was adjourned to 24.10.2017 with last opportunity. On

24.10.2017, the Presiding Officer was on leave and the case was further adjourned to 16.11.2017 for the same purpose with last opportunity. On the adjourned date i.e. 16.11.2017, Law Officer appeared on behalf of the petitioner-Gram Panchayat and sought time for filing written statement but the same was refused and the defence of defendant No.1 was struck off.

Learned counsel further contends that the Sarpanch was also impleaded in his personal capacity as defendant No.2 and he did not appear on 16.11.2017 and was proceeded against exparte.

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.

Perusal of the interlocutory orders would show that the Sarpanch who was impleaded as party defendant No.2 in the suit appeared of its own on three dates and thereafter, he absented himself from the Court and was proceeded against exparte.

It appears from the record that the Law Officer appeared for defendant No.1 for the first time on 16.11.2017 and

requested for a date for filing written statement on behalf of defendant No.1. The prayer was not adhered to by the Court, resulting in striking off the defence for want of filing written statement.

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)**, was 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 and 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.

In view of nature of order being passed by this Court, there is no necessity of calling upon any response from the

respondents, as only one opportunity is being granted subject to payment of adequate costs.

In view of above facts and circumstances of the case, I deem it appropriate to grant one opportunity to defendant No.1- Gram Panchayat for filing written statement, subject to payment of costs of Rs.20,000/- to be paid to the plaintiff forehand.

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.

29.05.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No