In the High Court of Punjab and Haryana at Chandigarh

119 **CR No. 3657 of 2018**
Date of decision:29.5.2018

Mohd Ishak deceased through LRs.
......petitioner

Versus

State Bank of India
.......Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. J.S.Hooda, Advocate,
for the petitioner.

****

RAJ MOHAN SINGH, J (oral)

Petitioners have assailed the order dated 8.3.2018 passed by Civil Judge (Sr. Divn.) Mewat, vide which defence of petitioners-defendants was struck off for non filing of written statement within a period of 90 days.

Learned counsel for the petitioners submitted that the petitioners appeared through their counsel on 14.11.2017 by way of filing memo of appearance of the counsel. The case was adjourned for 6.12.2017 i.e. the date on which power of attorney was filed by the counsel. Next date was given as 8.3.2018. The defence of the petitioners was struck off on the said date on the ground that no written statement was filed and period of 90 days stood expired on 14.2.2018.

Plaintiff- respondent filed a suit for recovery of ₹ 4,32,667/- with costs including court fee of ₹ 28,050/-. Pleadings and impugned order would show that the petitioners had appeared on 14.11.2017 through their counsel, who had filed memo of appearance and only two effective opportunities were given to the petitioners to file written statement on 6.12.2017 and 8.3.2018.

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

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 the 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.

In the present case, the conduct of the defauling party cannot be presumed to be so grave, which would debar them from contesting the suit. 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 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, 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 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. Since the rule of procedure is handmaid of justice, therefore, the same is intended to meet ends of justice.

Taking into consideration the aforesaid facts, I deem it appropriate to consider this case without issuing notice to the respondent as it would further delay disposal of the present revision petition as well as the suit, however, the opposite party can best be compensated with costs of ₹ 15,000/- to be paid to the plaintiff before granting indulgence by the trial Court in the aforesaid context.

Consequently, the impugned order is set aside. Petitioners are granted one opportunity for filing written statement subject to payment of costs of ₹ 15,000/- to be paid to the plaintiff.

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

Petition stands disposed of accordingly.

(RAJ MOHAN SINGH)
May 29, 2018 JUDGE

anita

Whether reasoned/speaking Yes/No
Whether reportable Yes/No