

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

CR No.4119 of 2017

Date of Decision: 19.09.2018

Tajinder Kaur and another

...Petitioners

Versus

Amarjit Singh Bedi

....Respondent

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Raju Arora, Advocate
for the petitioners.

Mr. Hitesh Pandit, Advocate
for the respondent.

B.S.WALIA, J (Oral).

1. Challenge is to order Annexure P/2 dated 25.01.2017 and Annexure P/3 dated 27.04.2017 whereby the learned Civil Judge (Junior Division), Ludhiana, allowed the application filed by the respondent-plaintiff for striking off the defence of the petitioners-defendants on account of their having failed to file the written statement and reply to the stay application and also dismissed the application filed by the petitioners-defendants for setting aside order Annexure P/2 dated 25.01.2017.

2. Learned counsel for the petitioners contended that defence of the petitioners was struck off on the ground that they had neither filed the written statement nor reply to the stay application despite availing a number of opportunities. Learned counsel contended that inability of the

petitioners-defendants to file written statement and reply to the stay application was on account of their earlier counsel having got injured in an accident and was therefore not able to prepare and file the written statement and reply earlier while on 25.01.2018 a call for suspension of work was given by the bar association on account of murder of a lawyer and although the written statement and reply to stay application was ready the same could not be placed on record due to the suspension of work although, attempt was made to submit the written statement and reply to the stay application. Later in the day, same was sought to be placed on the record but the same was refused to be taken on record on the ground that Court time was over. Thereafter, the petitioners/defendants moved an application dated 27.01.2018 i.e. on the next working day for setting aside order dated 25.01.2018 along with copy of written statement and reply to the stay application and that in the circumstances, sufficient cause for not being able to file the written statement/reply to stay application within stipulated period of time was made out.

3. Per contra, learned counsel for the respondent has reiterated the reasoning on the basis of which the impugned orders were passed.

4. I have considered the matter and am of the view that in the light of position as noted above, sufficient cause for not being able to file the written statement/reply to stay application within stipulated period of time is made out therefore in the light of decision of Hon'ble Supreme Court in **Salem Advocate Bar Association, Tamil Nadu v. Union of India, 2005 AIR (SC) 3353** since the provision of Order 8 Rule 1 CPC are directory, time for filing written statement can be extended. In the

circumstances, it would have been in the interest of justice if the learned lower Court below had instead of striking off the defence of the petitioner, granted one last opportunity to file written statement subject to payment of costs.

5. In view of the position as noted above, the revision petition is allowed. Resultantly, the impugned orders are set aside and the written statement as well as reply to the application for stay stated to have been filed by the petitioners-defendants before the Court below is ordered to be taken on record for the purposes of deciding the civil suit pending between the parties subject to payment of costs of ₹ 3000/- to the respondent within one week of receipt of certified copy of this order. Learned trial Court to proceed in the matter in accordance with law.

(B.S.WALIA)
JUDGE

19.09.2018.
rajesh.k.khurana

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