

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

CR No.4099 of 2018 (O&M)
Date of decision: 02.07.2018

Labh Singh

.. Petitioner

vs.

Harmesh Kumar and another

.. Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Shakti Mehta, Advocate
for the petitioner.

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Harinder Singh Sidhu, J.

This revision petition has been filed by the petitioner impugning the order dated 07.03.2018 (Annexure P-2) passed by learned Civil Judge (Junior Division), Samana whereby his defence has been struck off for failure to file the written statement.

The petitioner is defendant No.1 in the suit instituted by respondent No.1. The suit was filed on 14.07.2017 and was adjourned to 16.08.2017 for which date the summons were issued to the defendants. On 16.08.2017, the petitioner (defendant No.1) appeared through Sh. Vikas Sharma, Advocate who filed his Power of Attorney. Defendant No.2 was directed to be served through Munadi and affixation and the case was adjourned to 21.10.2017. On 21.10.2017, ld. Civil Judge (Jr. Division) was on leave and the case was adjourned to 20.12.2017. On 20.12.2017, defendant No.2 was proceeded against ex-parte.

Learned counsel for the petitioner states that meanwhile, there was some dispute with his counsel due to which he engaged Mr. H.P.S. Tatla on 20.12.2017, who also filed his Power of Attorney and the case was adjourned to 07.03.2018 for filing written statement by defendant No.1 (petitioner). As the written statement on behalf of the petitioner was not

filed on 07.03.2018, the impugned order was passed.

Learned counsel for the petitioner contends that the lapse in filing the written statement was not intentional. It was only because of some misunderstanding between him and his earlier counsel Sh. Vikas Sharma, due to which he engaged to Mr. H.P.S. Tatla. He was not able to collect all the documents from his earlier counsel. He states that the petitioner would be gravely prejudiced if he is not allowed to file the written statement. He states that the matter is now fixed for 04.07.2018.

Considering the aforesaid facts and circumstances it may be in the interest of justice that the petitioner is given one last opportunity to file the written statement.

Accordingly, the revision petition is allowed. The order dated 07.03.2018 (Annexure P-2) to the extent of striking off the defence of the petitioner is set aside. The learned trial court may grant one last opportunity to the petitioner to file written statement, which may be filed on or before 04.07.2018. This shall be subject to payment of Rs.10,000/- as costs, to be paid to the respondent No.1. Payment of costs shall be the condition precedent for granting indulgence in favour of the petitioners to file the written statement.

This order has been passed without issuing notice to the respondent in order to avoid unnecessary expense and delay. A copy of this order may be conveyed to the respondent. In the event of his having any objection, he may file an application to that effect. On receipt of the application, the same be listed for hearing.

02.07.2018
Atul

(Harinder Singh Sidhu)
Judge