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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CR No. 5065 of 2016(O&M)
Date of Decision: 30.08.2018****Gurcharan Singh and others****.....Petitioners****Vs****Baldev Singh and others****....Respondents****CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Bikramjit Aroura, Advocate
for the petitioners.

Mr. Kewal Krishan, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(ORAL)

The petitioners have assailed order dated 31.01.2014 vide which defence of the defendants-petitioners was struck off for want of written statement.

The stand of learned counsel for the petitioners is that the petitioners are the purchasers of the suit land from defendants No. 4 and 5 who in turn purchased from Defendants No. 1 and 2. Defendants No. 1, 2, 3 (d) and 10 have already been proceeded against ex-parte in terms of Order 9 Rule 5 CPC vide order dated 12.07.2016. Defendants No. 3(b), 3(c), 4 and 5 have also been proceeded ex-parte.

In view of the above state of affairs, vis-a-vis the status of the aforesaid defendants, learned counsel for the petitioners instructed them not to come to the Court until and unless the information is given to them. The status of the aforesaid respondents on record has occasioned in not filing written statements in time for which learned counsel for the petitioners seeks

one opportunity subject to the payment of adequate costs.

In view of the judgment rendered in case of ***Kailash Vs. Nanhku and others, 2005 (20 RCR (Civil) 379; Sandeep Thapar Vs. SME Technologies Private Limited, 2014 (1) RCR (Civil) 729 and Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, AIR 205 SC 3353***; it can be noticed that the provision in terms of Order 8 Rule 1 CPC is directory in nature. The provision does not impose any embargo on the powers of the Court to extend time for filing written statement beyond the period of 90 days. Basically, the provision being rule of procedure has to be construed as directory, even though the same has been couched in mandatory overtone. The provision has to be applied with some flexibility.

For the reasons mentioned herein above, I deem it appropriate to grant one more opportunity to defendants No. 6 to 9 for filing written statement. Consequently, the revision petition is allowed and the impugned order is set aside subject to payment of costs of Rs. 15,000/- to be deposited with the Registrar General of this Court, who shall further deposited the same in Kerala Chief Minister's Distress Relief Fund towards relief to Kerala flood victims.

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

30th August, 2018

shabha

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes/No