

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4853 of 2018(O&M)
Date of Decision: 01.08.2018

Balbir Singh

.... Petitioner

Versus

Bank of Baroda and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ravinder Rana, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Prayer in this petition is for quashing of impugned order dated 22.08.2017 passed by Civil Judge (Junior Division), Chandigarh vide which defence of the petitioner/defendant No.4 was struck off.

[2]. Petitioner was a guarantor in a suit for recovery filed by the Bank. The provision in terms 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. In such eventuality, 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. Petitioner/defendant No.4 is a defaulting party in the present case and he is accused of not filing the written statement within a period of 90 days. Service on defendants No.1 to 3 was pending and the same was sought to be effected by way of publication for which plaintiff did not file publication charges as per impugned order.

[3]. In view of nature of order, which this Court proposes to pass, there is no necessity for calling any reply from the respondents, as only one opportunity is being granted subject to payment of adequate costs.

[4]. In view of aforesaid situation, indulgence can be granted in favour of the petitioner on the basis of ratio laid down in **Kailash Vs. Nanhku and others, 2005 (2) 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 2005 SC 3353**, wherein 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. The rule of procedure has to be treated as discretionary, even though the same is couched in mandatory overtone. However, discretion has to be exercised in a judicious manner.

[5]. In view of above, I deem it appropriate to condone
latch and omission on the part of defendant No.4 in not filing the
written statement within 90 days. Consequently, the present
revision petition is allowed. Impugned order is accordingly set
aside. Petitioner is granted one opportunity for filing written
statement, however subject to payment of costs of Rs.15,000/-
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.

August 01, 2018

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No