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

CR No.529 of 2017

Date of Decision: 19.07.2018

Girnar Impex Ltd. and another

....Petitioners

Vs

M/s Darvesh Sea Air Transport Co. and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Piyush Kant Jain, Advocate,
for the petitioners.

Mr. Vivek Chauhan, Advocate,
for respondent No.2.

RAJ MOHAN SINGH, J.(Oral)

1. Petitioners have assailed the order dated 20.12.2016 passed by Civil Judge (Junior Division), Ludhiana, vide which defence of the petitioners was struck off for want of filing of written statement.

2. Perusal of the record would show that two opportunities were afforded to the petitioners for filing written statement. Last opportunity was given subject to payment of costs of Rs.2000/-. The cost was not paid and the defence of the petitioners/defendants was struck off.

3. Perusal of the record would also show that on earlier occasion, petitioners were proceeded against exparte but at a subsequent stage, the said order was set aside.

4. Petitioners have also moved an application for production of document attached with the plaint. According to them, all the documents were not supplied and for want of those invoices, written statement could not be filed.

5. At this stage, this Court is not in a position to appreciate as to whether requisite number of documents are available on record or not but so far as striking of defence within 90 days is concerned, the same can be interfered with.

6. In **Kailash vs. Nanhku and others, 2005 (2) RCR (Civil) 379**, 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 in some compelling circumstances.

7. In the instant case, period of 90 days was not expired on the date when defence was struck off.

8. In **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**, the Hon'ble Apex Court has reiterated the aforesaid position with reference to the provision being rule of procedure and 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.

9. Apparently, three opportunities were provided including last opportunity subject to payment of costs.

10. In view of aforesaid position, I deem it appropriate to set aside the impugned order and allow the petitioner to file written statement, subject to payment of costs of Rs.15,000/- to be paid to the plaintiffs. The costs shall be in addition of costs already ordered by the trial Court.

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

12. Since the petitioners have already inspected the record, therefore, they may not insist upon production of document for filing written statement. The trial Court shall fix one date for filing written statement by the petitioners, however, subject to payment of costs as indicated above.

13. Disposed of.

19.07.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No