

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

CR No.5258 of 2018
Date of Decision : 29.08.2018

Kuldeep Kumar

...Petitioner

VERSUS

Sudesh

...Respondent

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

Present: Mr. S.S. Momi, Advocate for the petitioner.

B.S.WALIA, J. (Oral)

1. Challenge in the revision petition is to order dated 03.07.2018 (Annexure P-2), passed by the learned Addl. District Judge, Kaithal, striking off the defence of the petitioner.

2. A perusal of the impugned order reveals that on 03.07.2018, the case was fixed for filing of written statement by way of last opportunity. Instead of filing written statement, the petitioner appeared in Court apparently in an inebriated condition and created a ruckus that he did not want to take divorce since he had a 20 years old daughter. The learned Addl. District Judge, Kaithal observed that no ground was made out for grant of adjournment for filing of written statement, consequently, ordered the defence of the petitioner to be struck off. The matter was adjourned to 21.08.2018 for evidence of the respondent (petitioner before the learned trial Court).

3. Learned counsel for the petitioner states that the petitioner submitted an apology on the very same day in the Court of the learned Addl. District Judge, Kaithal, and prays that since no proceedings were conducted on 21.08.2018 and the matter was adjourned to the month of October for evidence of the respondent, one opportunity be granted to file the written statement on such terms as to costs as deemed appropriate by this Court. Learned counsel further states that the petitioner would not under any circumstances repeat the conduct as committed while appearing in Court on 03.07.2018.

4. I have heard learned counsel for the petitioner. In view of the order being passed, I do not propose to issue notice to the respondent since the same would result in delaying the proceedings pending before the learned Addl. District Judge, Kaithal, thereby causing inconvenience to the parties besides resulting in the respondent having to incur expenses for engaging a counsel to represent her before this Court.

5. Admittedly the petitioner did not file written statement within the period of time provided in respect thereto under Order 8 Rule 1 CPC. The petitioner is an agriculturist from rural background and is not well educated and was disturbed on account of divorce proceedings initiated by the respondent-wife and his having to look after a 12 years old daughter (inadvertently recorded as 20 years of age in the impugned order). In **Salem Advocate Bar Association, Tamil Nadu v. Union of India, 2005 AIR (SC) 3353**, Hon'ble the Supreme Court has held that the provision of Order 8 Rule 1 CPC are not mandatory but directory. In the circumstances, it would have been in the interest of justice if the learned trial Court instead

of striking off the defence of the petitioner, had granted last opportunity to the petitioner to file written statement subject to payment of costs. In the circumstances, if one opportunity is not granted to the petitioner to file written statement, the same would visit the petitioner with serious consequences as he would not be able to put forth his defence.

6. In the light of the position as noted above, I deem it appropriate to allow the revision petition by setting aside the impugned order and granting one opportunity to the petitioner to file written statement within a period of 10 days from the date of receipt of certified copy of this order, subject to payment of costs of ₹10,000/- to the respondent-wife. The same would be in keeping with the principles of natural justice. However, it is made clear that payment of costs of ₹10,000/- to the respondent is a condition precedent to the petitioner being allowed to file the written statement.

7. Revision petition allowed in aforementioned terms.

(B.S.WALIA)
JUDGE

29.08.2018

rajesh.k.khurana

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No