

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5396 of 2018(O&M
Date of Decision: 21.08.2018

RAJESH JAIN AND OTHERS

.....PETITIONERS

VERSUS

GURMEET SINGH

....RESPONDENT

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

Present:Mr. B.R. Rana-I, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have assailed the orders dated 04.05.2018 and 05.12.2016 passed by the trial Court whereby defence of the petitioners/defendants was struck off and application for setting aside the order dated 05.12.2016 was also dismissed.

[2]. Learned counsel for the petitioners contended that petitioners/defendants appeared before the trial Court on 01.09.2016 and the defence of the defendants was struck off on 05.12.2016 for want of written statement. An application filed for recalling of the order dated 05.12.2016 was also dismissed on 04.05.2018. Learned counsel for the petitioners prays for one opportunity to file written statement subject to payment of

adequate costs.

[3]. The provision in terms of Order 8 Rule 1 CPC has to be liberally construed being directory in nature, though the same has been couched in mandatory overtone. In appropriate cases, the Court can extend the time for filing written statement beyond the period of 90 days. The parameter on which discretion is to be exercised is based on the conduct of the defaulting party.

[4]. Keeping in view the approximate period of 90 days from the date of appearance of the defendants/petitioners before the trial Court, I deem it appropriate to consider the case of the petitioners on the strength of **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.**

[5]. The present order is being passed without issuing notice to the respondent as issuance of notice would further delay disposal of the suit before the trial Court. However, the opposite party can best be compensated with adequate costs.

[6]. Keeping in view the facts and circumstances of the case, I deem it appropriate to grant one opportunity to the defendants/petitioners to file written statement subject to payment of costs of Rs.15,000/- to be paid to the

plaintiff/respondent.

[7]. Consequently, the impugned orders are set aside. Petitioners are granted one opportunity for filing written statement, subject to payment of costs of Rs.15,000/- to be paid to the plaintiff/respondent. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context. If the cost is not acceptable to the respondent/plaintiff, liberty is granted to the respondent to file appropriate application before this Court.

[8]. Disposed of.

August 21, 2018

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No