

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6486 of 2018
Date of Decision : 27.09.2018.

Ishwar Chand

... Petitioner

VERSUS

Hans Raj and others

.... Respondents

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

Present: Mr. Vineet Chaudhary, Advocate for the petitioner.

B.S.WALIA, J. (Oral)

1. Challenge is to order Annexure P/2 dated 04.09.2018 passed by the learned Civil Judge (Junior Division), Rajpura, District Patiala, striking off the defence of petitioner/defendant No.2 on account of non-filing of the written statement within stipulated period of 90 days.

2. Learned counsel contends that the written statement could not be filed as counsel for the petitioner/defendant No.2 before the learned trial Court had been unwell, therefore, could not prepare the written statement and had made a request before the learned trial Court for grant of more time but the request was brushed aside. Leaned counsel states that the reason for petitioner/defendant No.2 not being able to file the written statement within the stipulated period of time constitutes sufficient cause, therefore, unduly harsh view was taken by the learned trial Court in striking off the defence of the petitioner/defendant No.2 and that final opportunity ought to have been granted on such terms as to costs or otherwise as deemed just and appropriate by the learned trial court.

3. In view of the order proposed to be passed, I do not consider it necessary to issue notice in the matter since the same would unnecessarily delay the proceedings before the learned trial Court. 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 directory. The position as noted above constitutes sufficient cause. In the circumstances, it would have been in the interest of justice if the learned lower Court instead of striking off the defence of petitioner/defendant No.2, had granted last opportunity to the petitioner to file written statement subject to payment of costs. Accordingly, without issuing notice to the other side, the impugned order is set aside qua petitioner/ defendant No.2 and petitioner/defendant No.2 is granted one opportunity to file the written statement within two weeks from today subject to payment of ₹ 5,000/- as costs to the respondent/plaintiff. On filing of the written statement in the manner as indicated above, learned trial Court to proceed in the matter in accordance with law.
4. Revision petition disposed of in the aforementioned terms.

(B.S.WALIA)
JUDGE

27.09.2018

rajesh.k.khurana

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No