

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

**CR No.6592 of 2017
Date of Decision: 15.05.2018**

Piara Singh

.....Petitioner

Vs

Gurdev Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashok Giri, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 02.02.2017 passed by Civil Judge (Junior Division), Jalandhar, whereby application filed by the petitioner under Order 8 Rule 1 CPC for striking off the defence of the defendant was disposed of.

[2]. The only contention of learned counsel for the petitioner is that the written statement was filed beyond 90 days and that too, during currency of the application filed by the petitioner for striking off the defence of the defendant. Trial Court disposed of the application on the ground that the suit itself is at the initial stage.

[3]. In view of ratio laid down in **Salem Advocate Bar**

Association, Tamil Nadu Vs. Union of India, AIR 2005 SC 3353, Kailash Vs. Nanhku and others, 2005(2) RCR (Civil) 379 and **Sandeep Thapar Vs. SME Technologies Private Limited, 2014(1) RCR (Civil) 729**, it can be seen that provision in terms of Order 8 Rule 1 CPC is to be construed as directory and in a given case, filing of written statement can be permitted beyond 90 days. The parameter on which discretion has to be exercised is based on the conduct of defaulting party. Even the defendant can be put to terms including imposition of cost. 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 under exceptional circumstances.

[4]. In my considered opinion, the discretion exercised by the trial Court cannot be interfered with, but the trial Court ought to have imposed some cost on the respondents for not filing the written statement within the period of 90 days.

[5]. In view of facts and circumstances of the case, I deem it appropriate to impose cost of Rs.5000/- on the respondents to be paid to the plaintiff/petitioner. Payment of cost shall be the condition precedent for granting indulgence for further proceedings by the trial Court. However, it is made clear that in case, respondents object to the payment of cost, they

would be at liberty to file appropriate application in the present revision petition.

[6]. Disposed of accordingly.

May 15, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No