

(112) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6616 of 2018
Date of decision: 14.11.2018

M/s Oriental Steel Private Limited and another

.... Petitioners

Versus

M/s Durga Diesel Engineering

.... Respondent

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

Present: Mr. Tanmoy Gupta, Advocate for the petitioners.

Mr. Gaurav Gupta, Advocate for the respondent.

B.S. WALIA, J. (ORAL)

[1] Challenge in the revision petition is to order dated 10.08.2018 passed by the learned Civil Judge (Jr. Div.), Palwal striking off the defence of the petitioners due to non-filing of the written statement in civil suit No.55 dated 12.03.2018 titled as M/s Durga Diesel Engineering v. M/s Oriental Steel Private Limited and another with a prayer for granting one opportunity to the petitioners to file the written statement.

[2] Learned counsel for the petitioners contends that only one opportunity was granted for filing written statement and the defence was struck off on the second date despite the fact that the counsel for the petitioners could not prepare and file the written statement as petitioner No.2 had fallen ill for a period of close to one week prior to the date fixed for filing of the written statement. Learned counsel contends that it is settled law that the provisions of Order 8 Rule 1 CPC are not mandatory but

directory and that if sufficient cause is shown, time for filing the written

statement can be extended. In the circumstances, learned counsel states that in view of petitioner No.2 having fallen ill as is evident from the medical certificate (Annexure P-2) and being unable to finalize the written statement with the counsel, sufficient cause is made out and that one opportunity be granted to the petitioners to file written statement on such terms as to costs as deemed appropriate by this Court failing which grave and irreparable damage would be occasioned to the petitioners.

[3] Per contra, learned counsel for the respondent contended that the medical certificate (Annexure P-2) only indicated that petitioner No.2 had fallen ill one week prior to the passing of the impugned order and that the same exhibited absence of diligence. He, however, contended that in case the Court was inclined to grant one opportunity to the petitioners to file written statement then the same should be subject to imposition of exemplary costs.

[4] I have considered the submissions of learned counsel for the parties. Admittedly, the petitioner had put in appearance before the learned trial Court on 20.04.2018 whereupon the case was adjourned to 29.05.2018 for filing of written statement. On said date, the written statement was not filed, whereupon the case was adjourned to 10.08.2018 for filing written statement. Even on the said date, written statement was not filed leading to the passing of the impugned order by the learned Civil Judge (Jr. Div.), Faridabad on the ground that the mandatory period of 90 days had already expired and that despite last opportunity having been given for filing written statement, the same had not been filed. Hon'ble the Supreme Court in **Salem Advocate Bar Association, Tamil Nadu v. Union of India, 2005 AIR (SC) 3353** held that the period of time stipulated in Order 8 Rule 1

CPC is directory and not mandatory and if sufficient cause is made out then time can be extended for filing the written statement.

[5] In the circumstance, although the petitioners had not been diligent in preparing the written statement well in time, yet the fact remains that petitioner No.2, as is evident from the medical certificate (Annexure P-2), in fact remained ill for a period of close to one week prior to the date of passing of the impugned order, consequently could not finalize the written statement. Accordingly, I am of the view that one opportunity be granted to the petitioners to file the written statement.

[6] In the light of the position as noted above, impugned order dated 10.08.2018 passed by the learned Civil Judge (Jr. Div.), Faridabad is set aside to the extent of striking off the defence of the petitioners. The petitioners shall 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 before the learned trial Court at the time of filing of the written statement.

(B.S. Walia)
Judge

14.11.2018
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reasonable : Yes/No.