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

CR No. 6738 of 2018

Date of Decision: 04.10.2018

Kulwant Singh

....Petitioner

Vs

Pritpal Singh

.....Respondent

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

Present: Mr. Arjun Veer Sharma, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has assailed the order dated 18.09.2018 passed by Civil Judge (Junior Division), Ludhiana vide which defence of the petitioner-defendant was struck off for want of written statement.

Learned counsel for the petitioner contends that suit for recovery was filed by the plaintiff against the defendant-petitioner on 06.03.2018. Defendant-petitioner appeared in the suit on 07.05.2018 and the case was adjourned to 25.05.2018. The written statement was not filed and the case was further adjourned to 17.07.2018 and then to 30.07.2018 for filing written statement. On 30.07.2018, Power of Attorney was filed by new counsel on behalf of the defendant and thereafter, the case was

adjourned to 18.09.2018 i.e. the date on which impugned order came to be passed.

Learned counsel further contends that only three effective opportunities were available with the petitioner on 25.05.2018, 17.07.2018 and 30.07.2018 for filing written statement. Of course, period of 90 days has elapsed but the new counsel made appearance only on 30.07.2018.

Provision in terms of Order 8 Rule 1 CPC is to be liberally construed being directory in nature. In appropriate case, the Court can extend the time for filing written statement beyond the period of 90 days, subject to imposition of adequate costs. The parameter on which discretion is to be exercised is based on the conduct of defaulting party.

Keeping in view the facts and circumstances of the case particularly in the light of ratio as laid down in **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**, it can be appreciated that 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. Though the provision is directory in nature but the same is couched in mandatory overtone.

In view of nature of order which this Court proposes to pass, there is no necessity of calling upon any response from the respondent as it would further delay disposal of the case.

In view of above, one more opportunity is granted to the petitioner-defendant for filing written statement, subject to payment of costs of Rs.10,000/- which shall 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.

Disposed of.

04.10.2018

Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No