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

CR No. 6885 of 2018

Date of Decision: 09.10.2018

Sajan Mishra

....Petitioner

Vs

Gurminder Singh Thind

.....Respondent

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

Present: Mr. Pranav Handa, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has assailed the order dated 06.08.2018 passed by Civil Judge (Junior Division), Jalandhar vide which defence of the petitioner-defendant was struck off for want of written statement.

Perusal of the record would show that defendant appeared in the Court on 17.04.2018 and thereafter, the case was adjourned to 20.05.2018 and 05.07.2018, for filing written statement. Ultimately, defence of the defendant-petitioner was struck off vide order dated 06.08.2018.

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

90 days. Even the defendant can be put to terms including imposition of adequate costs. The parameter on which discretion is to be exercised is based on the conduct of defaulting party.

Evidently, petitioner has availed three opportunities including the date i.e. 17.04.2018 on which petitioner made his appearance through his learned counsel. Thereafter, there was change of counsel and only three effective opportunities were availed by the petitioner.

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 has been held that the provision in terms of 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, such powers has to be exercised in a judicious manner. The procedure being rule of procedure has to be treated as directory, though the same has been 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.

Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

Disposed of.

09.10.2018

Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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