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

**Civil Revision No.7452 of 2016 (O&M)
Date of Decision: 11.09.2018**

Karaj Singh

.....Petitioner

Vs

Jasbir Singh and others

....Respondents

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

Present: Mr. Raman Goklaney, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the orders dated 30.08.2016 and 06.10.2016 passed by the Civil Judge (Jr. Divn.) Ferozepur vide which the defence of the petitioner/defendant No.4 was struck off and the application for recalling the said order was also dismissed.

[2]. Notice of motion was issued on 07.11.2016. Perusal of the orders dated 23.01.2017, 09.05.2017, 21.07.2017 and 15.01.2018 would show that none appeared on behalf of the respondents despite service. Pronouncement of final judgment was stayed vide order dated 15.01.2018.

[3]. Further perusal of record in terms of interlocutory

orders dated 13.10.2015, 27.11.2015, 14.01.2016, 03.02.2016, 16.03.2016 and 02.04.2016 passed by the trial Court would show that the petitioner/defendant No.4 appeared in person before the trial Court. Since the case was being considered for the service of other defendants, therefore, no written statement was filed by defendant No.4. Even perusal of the orders dated 27.11.2015, 14.01.2016 and 03.02.2016 would also show that there was no recital made in respect of requirement of filing of written statement at the instance of defendant No.4.

[4]. Thereafter defendant No.4 engaged Sh. J.S. Kamboj, Advocate, but the written statement could not be filed and the defence of defendant No.4/petitioner was struck off vide order dated 30.08.2016.

[5]. Petitioner filed an application for recalling of the aforesaid order along with written statement which was drafted by Ms. Surjit Kaur, Advocate on his behalf. The said application for recalling has also been dismissed vide the impugned order dated 06.10.2016.

[6]. I have considered the submissions made by learned counsel for the petitioner.

[7]. The provision in terms of Order 8 Rule 1 CPC has to be liberally construed being directory in nature. The Court can extend the time for filing written statement beyond 90 days in

appropriate cases and the defendant can be put to terms including imposition of adequate cost. The parameters on which this discretion is to be exercised are based on the conduct of defaulting party. Though the provision is couched in a mandatory overtone, but it has to be applied with flexibility as it does not create any embargo on the powers of the Court to extend the time beyond the period of 90 days.

[8]. In **Kailash vs. Nanhku & Ors., 2005(2) RCR (Civil) 379; Sandeep Thapar vs. SME Technologies Private Limited, 2014(1) R.C.R. (Civil) 729** and **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353**, it was ruled that the provision in question is a rule of procedure and has to be treated directory, even though the same is couched in a mandatory overtone. The provision has to be applied with some flexibility, if the same does not cause irreparable loss to the opposite party.

[9]. For the reasons recorded hereinabove, this revision petition is allowed. Impugned orders dated 30.08.2016 and 06.10.2016 passed by the Civil Judge (Jr. Divn.) Ferozepur are hereby set aside, thereby granting one opportunity to the defendant/petitioner No.4 for filing written statement, however subject to payment of costs of Rs.15,000/- to be deposited with the Registrar General of this Court, who shall further deposit the

same in Kerala Chief Minister's Distress Relief Fund towards relief to Kerala flood victims.

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

September 11, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No