

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

CR No.7288 of 2018 (O&M)
Date of Decision : 21.11.2018

Sukhdev Singh (deceased) through L.Rs.

...Petitioner

VERSUS

Mangal Singh

....Respondent

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

Present: Mr. Deepak Aggarwal, Advocate for
Mr. Veneet Sharma, Advocate for the petitioner.

Mr. G.P.S. Bal, Advocate for the respondent.

B.S.WALIA, J. (Oral)

1. Challenge in the revision petition is to order dated 12.09.2018 (Annexure P-4), passed by the learned Civil Judge (Senior Division), Amritsar (hereinafter referred to as 'the learned trial Court') striking off the defence of the petitioner.

2. Learned counsel for the petitioner states that the petitioner was prevented by sufficient cause from not filing the written statement within the stipulated period of time as well as from depositing the costs and that in the circumstances in view of the decision of Hon'ble the Supreme Court in Salem Advocate Bar Association, Tamil Nadu vs. Union of India, 2005 AIR (SC) 3353 as well as the decision of this Court in Municipal Committee Kharkhoda vs. Bhim Singh 1987 (1) RCR (Rent) 442, the

petitioner is entitled to seek modification/recall of order as well as enlargement of time under Section 151 read with Section 148 CPC.

3. Whatever circumstances led to the non-filing of the written statement as well as failure to pay costs were not brought to the notice of the learned trial Court, by moving an appropriate application and satisfying the Court that there was sufficient case in not filing the written statement as well as in not paying the costs. Instead, the petitioner has straightway invoked the jurisdiction of this Court. Faced with the aforementioned situation, learned counsel states that he does not press the instant petition and would pray to withdraw the same with liberty to file an appropriate application before the learned trial Court, for recalling of the impugned order by showing sufficient cause for not filing the written statement and depositing the costs within the stipulated period of time.

4. Per contra, learned counsel for the respondent contends that adequate time was availed by the petitioner and he should have been more vigilant to ensure filing of the written statement.

5. Having considered the submissions of learned counsel for the parties and taking into account all aspects of the matter including the decision of Hon'ble the Supreme Court in Salem Advocate Bar Association Tamil Nadu's case (supra) as well as the decision of this Court in Municipal Committee, Kharkhoda's case (supra), the revision petition is disposed of by relegating the petitioner to avail the remedy of moving an appropriate application before the learned trial Court, within a period of 7 days from the date of receipt of certified copy of this order. In case any

such application is moved, within the time as stipulated above, the learned trial Court will consider and decide the same in accordance with law, as expeditiously as possible, preferably within a period of two weeks thereafter and till such time, decision is taken on the application, further proceedings before the learned trial Court shall remain in abeyance.

6. Revision petition disposed of in above terms.

(B.S.WALIA)
JUDGE

21.11.2018
rajesh.k.khurana

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