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

**CM No.10908-CII of 2018 in/and
Civil Revision No.7893 of 2016
Date of Decision: 04.07.2018**

SUMITRA DEVI

.....Petitioner

Vs

LOKESH GOYAL & ORS

.....Respondents

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

Present: Mr. Adish Gupta Advocate
for the applicant-petitioner.

Mr. Rajesh Lamba, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

CM No.10908-CII of 2018

For the reasons mentioned in the application, the same is allowed. Date of hearing is preponed for today. Learned counsel for the parties consented to argue the case on merits.

On the basis of aforesaid, I proceeded to decide the case on merits.

Main case

Petitioner has assailed the orders dated 19.07.2016 and 02.11.2016 passed by the Civil Judge (Sr. Divn.) Faridabad

vide which defence of the petitioner/defendant No.6 was struck off for not filing the written statement within a period of 90 days. The application for recalling the order dated 19.07.2016 was also dismissed by the trial Court.

Perusal of order dated 19.07.2016 would show that defendants No.1 and 6 had appeared through their counsel on 19.01.2016 and thereafter three opportunities were granted to them to file the written statement. Period of 90 days expired and thereafter defence of defendants No.1 and 6 was struck off.

Learned counsel for the petitioner submitted that the provision under Order 8 Rule 1 CPC has to be liberally construed being directory in nature. In appropriate cases, the Court can extend the time for filing written statement and the defendant can be put to terms including compensation by way of adequate cost.

I have considered the submissions made by learned counsel for the parties.

The parameters on which discretion has to be exercised is based on the conduct of defaulting party. Apparently, three opportunities were sought by defendants No.1 and 6 to file written statement, but the same was not filed within a period of 90 days. In **Kailash vs. Nanhku & Ors., 2005(2) RCR (Civil) 379**, the aforesaid controversy was reiterated. The

view expressed in **Kailash's** case (supra) was further approved by the Hon'ble Apex Court in **Sandeep Thapar vs. SME Technologies Private Limited, 2014(1) R.C.R. (Civil) 729** wherein it was 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 judicious manner.

In **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353** similar proposition was answered by the Hon'ble Apex Court with reference to the provision being rule of procedure and the same has to be treated as directory even though the same has been couched in a mandatory overtone. The provision has to be applied with some flexibility. Since the rule of procedure is handmaid and is intended to meet ends of justice, therefore, I deem it appropriate to consider this case on sympathetic consideration. The trial Court shall grant one more opportunity to the petitioner for filing the written statement.

In view of above, the impugned orders dated 19.07.2016 and 02.11.2016 passed by the Civil Judge (Sr. Divn.) Faridabad are hereby set aside. This revision petition is allowed, however subject to payment of Rs.15,000/- as costs to

be paid to the plaintiff.

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

July 04, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/Nos