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

CR No. 7950 of 2018

Date of Decision: 22.11.2018

Brij Lata Saraswat

....Petitioner

Vs

Anju Kohli and others

.....Respondents

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

Present: Mr. Dinesh Mahajan, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has assailed the order dated 17.10.2018 passed by Civil Judge (Junior Division), Faridabad, vide which written statement tendered by the defendants on the same day on which order of striking of defence of the defendants was passed before lunch was taken on record.

The trial Court vide order dated 17.10.2018 (passed before lunch) struck off the defence of the defendants by making interim order dated 04.07.2018 to be absolute. The matter was taken up after lunch on the request of learned counsel for defendants No.1 to 3 and the plea of defendants No.1 to 3 was accepted on the premise that written statement was to be filed in the case in the morning. Before lunch, a

request was made to the learned counsel for the plaintiff that the matter be taken up at about 3.00 PM, but somehow due to miscommunication, the same was not brought to the notice of the Court and the defence of the defendants was struck off.

On oral request of learned counsel for defendants No.1 to 3, the case was taken up and the written statement was allowed to be filed by defendants No.1 to 3. The indulgence shown by the Court cannot be held to be illegal.

Even otherwise, in **Kailash vs. Nanhku and others, 2005 (2) RCR (Civil) 379, Sandeep Thapar vs. SME Technologies Private Limited, 2014(1) RCR (Civil) 729**, it was held that provisions 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. In appropriate cases, the rigor of aforesaid provision can be diluted. The provision has been held to be directory, even though the same is couched in mandatory overtone.

In **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353**, similar proposition was reiterated by the Hon'ble Apex Court thereby holding the rule of procedure to be directory and the provision has to be applied with some flexibility.

In view of aforesaid legal position, indulgence

granted by the trial Court cannot be held to be illegal by any stretch of imagination.

This revision petition is accordingly, dismissed.

22.11.2018

Jyoti Yadav

**(RAJ MOHAN SINGH)
JUDGE**

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