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

CR No. 7995 of 2017

Date of Decision: 16.08.2018

Bhim Singh

....Petitioner

Vs

Randhir Singh

.....Respondent

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

Present: Mr. Wazir Singh, Advocate,
for the petitioner.

Mr. Sandeep Singh Ghangas, Advocate,
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

1. Petitioner has challenged the order dated 21.02.2017 passed by Civil Judge (Junior Division), Panipat vide which defence of the petitioner was struck off.
2. The impugned order was passed on the premise that a period of 90 days for filing written statement has expired.
3. Perusal of the pleadings would show that a suit for mandatory injunction was filed by the plaintiff on 24.06.2016. An application under Order 7 Rule 11 CPC was filed by the defendant-petitioner on 01.07.2016 after appearance before the trial Court on 28.06.2016. The application for rejection of plaint was ultimately dismissed by the trial Court on 06.02.2017. An

application under Order 39 Rules 1 and 2 CPC filed by the plaintiff was also dismissed vide order of even date i.e. 06.02.2017.

4. The present revision petition was filed in the High Court. At the time of issuance of notice of motion on 15.11.2017, following order was passed:-

“Learned counsel for the petitioner, inter alia, contends that dispute in the present case is between the real brothers. An application under Order 7 Rule 11 CPC was dismissed on 06.02.2017 (Annexure P-3) and thereafter, a date was given for filing the reply. On 21.02.2017 itself, the defence of defendant-petitioner has been struck off. Learned counsel further states that attempts for out of Court settlement were made before the trial Court, but all in vain.

Notice of motion for 20.02.2018.

Parties are directed to be present in Court on the next date of hearing.

In the meantime, passing of final order by the trial Court shall remain stayed.”

5. Since passing of final order by the trial Court was stayed, thereafter plaintiff led his evidence. The witnesses of the

plaintiff were even cross-examined by the defendant even before passing of order dated 15.11.2017.

6. Plaintiff closed his evidence on 12.10.2017.

7. In view of statement of Om Pal- brother-in-law of plaintiff, effort made by the petitioner for effecting compromise has been admitted.

8. Even at the time of consideration of the revision petition on 25.07.2018, statement of learned counsel for the petitioner was noticed to the effect that the petitioner is ready to give double of the disputed land i.e. 13 square yards to the respondent. Both the parties were directed to be present in Court in order to explore any possibility of compromise as both the parties are real brothers.

9. Today, both the parties have come present in Court.

10. Learned counsel for the respondent on instructions from respondent- Randhir Singh has stated that the respondent is not agreeing to the proposal as made on behalf of the petitioner.

11. I have considered the controversy on merits.

12. The defence of the petitioner was struck off on 21.02.2017. Thereafter, passing of final order by the trial Court was stayed on 15.11.2017. During the intervening period, plaintiff had already concluded his evidence.

13. There is apparent lach on behalf of the petitioner in not challenging the impugned order dated 21.02.2017 in time and allowed the plaintiff to conclude his evidence.

14. Provisions in terms of Order 8 Rule 1 CPC are to be liberally construed being directory in nature and in appropriate case, the Court can extend the time for filing written statement. The defendant-petitioner can be put to terms including imposition of adequate costs.

15. In view of law laid down in **Kailash vs. Nanhku and others, 2005 (2) RCR (Civil) 379, Sita Ram and others vs. Gurbax Singh and others, 2013(4) Law Herald 3436, Sukhjinder Singh @ Sukha vs. Shamsher Singh, 2014(2) Law Herald 1762, 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 can be concluded that the provision in terms of Order 8 Rule 1 CPC does not impose any such embargo on the powers of the Court to extend time for filing written statement beyond the period of 90 days, provided the Court is satisfied that the defendant was sufficiently prevented from filing written statement in time. The parameters on which discretion has to be exercised are based on the conduct of the defaulting party.

16. The provision is procedural and directory in nature, even though the same has been couched in mandatory overtone.

17. Taking into consideration the relationship between the parties and the effort made by the defendant-petitioner to effect compromise at different quarters, I deem it appropriate to grant one opportunity to the petitioner-defendant to file written statement subject to payment of costs of Rs.20,000/- to be paid to the plaintiff.

18. The trial Court shall fix a date for filing written statement, however, payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

19. Disposed of.

16.08.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No