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

**Civil Revision No.120 of 2019
Date of Decision: 11.01.2019**

PYARE LALPetitioner
Vs
SATENDER AND ANOTHERRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashish Yadav, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 27.11.2018 passed by the Civil Judge (Jr. Divn.) Rewari vide which defence of the petitioner was struck off by the order of the Court for not filing written statement in the extended period of 90 days.

[2]. Learned counsel for the petitioner prays for one opportunity for filing written statement subject to adequate costs as the provision in terms of Order 8 Rule 1 CPC is directory in nature.

[3]. Keeping in view the controversy of the present nature, I deem it appropriate to decide this revision petition without calling upon the respondents at this stage as issuance of notice would further delay in disposal of the case. However, cause of the respondents can best be taken care by way of imposing

adequate costs on the petitioner.

[4]. Perusal of the impugned order would show that three opportunities were granted to the defendant/petitioner for filing the written statement. Defendant/petitioner appeared through his counsel in the trial Court on 23.08.2018 and vakalatnama was filed on his behalf. Thereafter, case was adjourned for 04.10.2018 and 12.11.2018. The impugned order was passed on 27.11.2018 i.e. on the fourth appearance of the petitioner. The trial Court passed the impugned order striking off the defence of the petitioner for want of written statement.

[5]. I have considered the submission made by learned counsel for the petitioner.

[6]. The provisions in terms of Order 8 Rule 1 CPC are directory in nature and the same has to be liberally construed. The Court can extend the time in an appropriate case for filing written statement by recording its satisfaction. Even the defendant can be put to terms including imposition of adequate costs. The direction has to be exercised on the basis of conduct of defaulting party. In **Kailash vs. Nanhku & Ors., 2005(2) RCR (Civil) 379,** the aforesaid analogy was reiterated by the Court.

[7]. The aforesaid view was again reiterated 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 power has to be exercised in special circumstances.

[8]. In **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353** the similar proposition was reiterated 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.

[9]. In view of above, the impugned order dated 27.11.2018 passed by the Civil Judge (Jr. Divn.) Rewari is set aside. This revision petition is allowed, subject to payment of costs of Rs.15,000/- to be paid to the plaintiffs in equal proportion.

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

January 11, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No