

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

CR-439-2019

Date of decision:-1.7.2019

Ram Raj

...Petitioner

Versus

Gurbachan Singh

...Respondent

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Munish Puri, Advocate  
for the petitioner.

Mr.Karan S. Gill, Advocate  
for the respondent.

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**H.S. MADAAN, J.(ORAL)**

In a civil suit filed by plaintiff – Gurbachan Singh against defendant Ram Raj, notice was given to him, who had put in appearance in the Court, however written statement was not filed despite availing of several opportunities. The trial Court vide order dated 23.10.2018 observing that the defendant had appeared on 9.7.2018 and thereafter despite availing four opportunities had failed to furnish written statement and statutory period of 90 days had elapsed, directed that defence of defendant be struck off.

The defendant felt aggrieved by the said order and has approached this Court by way of filing revision petition, notice of which was given to plaintiff – respondent, who put in appearance through counsel.

I have heard learned counsel for the parties.

Learned counsel for the revisionist has contended that the written statement could not be filed in the Court within a period of 90 days on account of lack of communication between the revisionist and his counsel and that the omission to file written statement was not intentional or wilful and further the revisionist has been acquitted in the criminal case under Section 138 of Negotiable Instruments Act, 1881 and on the similar assertions the instant suit has been filed and if the revisionist is not permitted to file written statement and his defence remains struck off, he would be greatly prejudiced. In support of his contention, he has referred to judgment **Indus Towers Ltd. Versus Manoj Kumar 2016(2)L.A.R. 593** by a Co-ordinate Bench of this Court wherein it was observed that period of 90 days in filing the written statement under Order 8 Rule 1 CPC is not mandatory but directory in nature and as valuable rights of the petitioner were involved in the suit, he should not be deprived of to effectively contest the suit and defendant was afforded one opportunity to file the written statement subject to payment of cost.

Whereas learned counsel for the respondent – plaintiff has contended that there was no justification for the defendant's omission to file the written statement despite availing of several opportunities and no justifiable reason is there to set aside the impugned order and grant an opportunity to the defendant to file written statement. In support of his arguments, he has referred to a judgment of the Apex Court passed in Civil Appeal No(S). 4266-4267 OF 2018 titled **Atcom Technologies Limited Versus Y.A. Chunawala and Co. & Ors.**

After hearing the arguments advanced by learned counsel for the parties and going through the authorities referred to by the counsel, I find that the revision petition deserves to be accepted. It is desirable to decide a lis on merits, rather than non-suiting a party on technical ground. Though the defendant has shown some lethargic and casual attitude but then for the delay caused by him in prolonging the proceedings, he can be burdened with costs. Nevertheless, the ends of justice demand that an opportunity should be given to him to present his view point before the trial Court and contest the suit brought by the plaintiff.

Therefore, the revision petition is accepted. The impugned order is set aside and the revisionist – defendant is afforded one opportunity to file written statement, subject to payment of Rs.10,000/- as cost. Out of the cost amount, a sum of Rs.5,000/- be paid to the plaintiff, whereas remaining sum of Rs.5,000/- be deposited with District Legal Services Authority, Pathankot on the date fixed by the trial Court.

1.7.2019  
Brij

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**