

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

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**CR No. 5468 of 2018 (O&M)
Date of Decision: 1.2.2019**

Ajmer Singh Dhillon

....Petitioner

Vs

Gurdeep Singh and anr

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr.Varun Sharma, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has assailed the order dated 23.5.2018 passed by Civil Judge (Jr. Division), Ludhiana, vide which defence of the defendant-petitioner was struck off for want of written statement.

The impugned order passed by the trial Court reads as under:-

“Written statement and reply to the stay application not filed by defendant. Perusal of the file reveals that defendant had appeared before the court

in the present case on 25.7.2017 through Sh.R.P.Grover, Advocate. Period of 90 days has elapsed, but written statement and reply to the stay application on behalf of defendant has not been filed. Accordingly, defence of defendant is, hereby, struck off. Now case stands adjourned to 9.8.2018 for plaintiff evidence. Dasti summons of witnesses may be taken for effecting service upon them, if required.”

Perusal of the record would show that an application for supply of documents was filed by the defendant-petitioner after his appearance in the Court on 25.7.2017. The said application was decided only on 2.2.2018. On 2.2.2018, the case was further adjourned to 12.3.2018 for filing the written statement. On the adjourned date i.e. 25.4.2018, last opportunity was granted to the defendant-petitioner with deeming fiction of striking off the defence in the event of not filing the written statement on 23.5.2018. The impugned order was passed on 23.5.2018.

Learned counsel for the petitioner contended that the time consumed in deciding the application for production of documents from 25.7.2017 to 2.2.2018 was not attributable to the petitioner and only two effective opportunities were granted to the defendant-petitioner to file the written statement.

In Kailash vs. Nanhku and others, 2005 (2) RCR

(Civil) 379, 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, the provision of Order 8 Rule 1 CPC was considered. It was held that the said provision has to be liberally construed being directory in nature. The Court can extend the time for filing the written statement even beyond the extended period of 90 days by putting the defendant to terms by imposition of adequate costs. 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 under exceptional circumstances. The provision being rule of procedure has to be treated as directory even though the same has been couched in mandatory overtone. The provision has to be applied with some flexibility.

In view of above, I deem it appropriate to grant one opportunity to the petitioner to file written statement. Moreover, the other party can be compensated with costs.

Consequently, the impugned order is set aside. Petitioner is granted one opportunity for filing written statement subject to payment of costs of ₹ 15,000/- to be paid to the plaintiff-respondents.

Payment of costs shall be the condition precedent for

granting indulgence by the trial Court in the aforesaid context.

Petition stands disposed of accordingly.

**(RAJ MOHAN SINGH)
JUDGE**

February 01, 2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No