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

**Civil Revision No.6201 of 2018
Date of Decision: 05.02.2019**

SURENDER & ORS

.....Petitioners

Vs

MARI @ CHANDER KALAN & ANR

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Lalit Kumar, Advocate
for the petitioners.

Mr. Sunny Bhardwaj, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioners are the aggrieved of the order dated 03.07.2018 passed by the Addl. Civil Judge (Sr. Divn.) Loharu, District Loharu, vide which defence of the petitioners was struck off for want of written statement.

[2]. Service upon the defendants was effected on 06.02.2018 and thereafter the case was adjourned for filing written statement. The written statement was not filed even after grant of extended period of 90 days.

[3]. Plaintiff filed a suit for declaration to the effect that release deed dated 06.06.2016 executed by plaintiff and

defendants No.3 to 5 in favour of defendants No.1 and 2 and consequent mutation are illegal, null and void.

[4]. It appears from the record that at one point of time, the trial Court opted to see the outcome of intended efforts made by the parties to devise modes of alternative dispute resolution system as provided under Section 89 CPC. Having failed on that front, the Court proceeded to struck off the defence of the defendants for want of written statement and framed issues arising out of the material on record.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. In **Kailash vs. Nanhku & Ors., 2005(2) RCR (Civil) 379; Sandeep Thapar vs. SME Technologies Private Limited, 2014(1) R.C.R. (Civil) 729** and **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353**, it was held that the 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 even beyond the period of 90 days, of course with some restraint. The provision is to be liberally construed being directory in nature, though the same has been couched in a mandatory overtone. Even defendant can be put to terms including imposition of adequate costs.

[7]. The parameters on which discretion is to be exercised is based on the conduct of the defaulting party for which plaintiff can be compensated with adequate costs. The provision being rule of procedure has to be treated directory and has to be applied with some flexibility. Since the rule of procedure is handmaid of justice, so in the interest of of justice one opportunity can be granted to the defendants/petitioners to file written statement on a date to be fixed by the trial Court.

[8]. In view of above, the impugned order dated 03.07.2018 passed by the Addl. Civil Judge (Sr. Divn.) Loharu, District Loharu, is set aside. This revision petition is allowed, subject to payment of costs of Rs.15,000/- to be paid to the plaintiff.

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

February 05, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No