

115

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

CR No. 997 of 2019 (O&M)
Date of Decision: 11.02.2019

Sukhdev Singh

-Petitioner

Vs

Deepak Raj Bindra and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gaurav Sharma, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has preferred this revision petition against the order dated 03.12.2018 passed by Civil Judge (Senior Division), Jalandhar vide which defence of the defendant-petitioner was struck off for want of written statement.

Defendant-petitioner appeared before the trial Court through his counsel on 06.09.2018 and the case was adjourned to 04.10.2018 for filing written statement. On the adjourned date, trial Court passed the order that the original file has been requisitioned by the lower Appellate Court, therefore, same was awaited till 12.11.2018. On 12.11.2018, file was placed before the Duty Magistrate as the Presiding Officer was on leave and the case was adjourned to 03.12.2018.

On 03.12.2018, impugned order came to be passed on the ground that two effective opportunities were given to the defendants to file their written statement but they did not file the same. Period of 90 days has already elapsed, therefore, defence of the defendants was struck off for want of written statement. The case was adjourned to 29.01.2019 for examination of plaintiff witness.

Perusal of the aforesaid orders dated 06.09.2018, 04.10.2018 and 12.11.2018 would show that on two occasions, either the file was not available with the trial Court or Presiding Officer was on leave and the Duty Magistrate had passed proper order.

The provision of Order 8 Rule 1 CPC is directory in nature, though the same has been couched in a mandatory overtone. 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**, it was held that the Court is competent to extend period beyond 90 days for filing written statement as the rule is handmaid of justice.

In view of nature of order which this Court proposes to pass, there is no necessity of issuing any notice to the

respondents as it would further delay disposal of the suit.

In view of material on record and the legal position as enumerated hereinabove, I deem it appropriate to grant one opportunity to the defendant-petitioner to file written statement on the date fixed before the trial Court.

On 29.01.2018, no PW was present and the case stands adjourned to 13.02.2019 for plaintiff witness.

In view of above, the petitioner is granted one opportunity to file written statement on the date fixed i.e. 13.02.2019, however, subject to payment of costs of Rs.5000/- to be paid to the plaintiff.

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

Disposed of.

11.02.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No