

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.1794 of 2019(O&M)
Date of Decision: 14.03.2019

Bharti and others

.....Petitioners

Versus

Smt. Indrawati and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. K.P. Rana, Advocate for
Mr. N.S. Panwar, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.(Oral)

[1]. Defendants No.1 to 4/petitioners have preferred this revision petition against the order dated 15.11.2018 passed by Civil Judge (Junior Division), Sonipat vide which defence of defendants No.1 to 4/petitioners was struck off for want of written statement.

[2]. Perusal of the record would show that the suit was filed and the same was received by the Court by way of assignment on 07.08.2018. Notice was issued to the respondents for 14.08.2018. On 14.08.2018, service qua petitioners was complete and power of attorney was filed by their counsel and

the case was adjourned to 21.09.2018 for filing written statement by the petitioners/defendants No.1 to 4. At that time, service qua respondents No.5 to 7, 9 to 11, 14 and 16 was incomplete. Since the Presiding Officer was to avail leave w.e.f 07.09.2018 to 21.09.2018, therefore, the case was taken up on 15.09.2018 and the same was adjourned to 25.10.2018 in the absence of the parties. On 25.10.2018, written statement was not filed by defendants No.1 to 4/petitioners and the case was further adjourned to 15.11.2018. The service qua other respondents was also incomplete on the said date and for that, fresh notices were issued to them by substituted service. On 15.11.2018, the impugned order came to be passed.

[3]. Learned counsel appearing for the petitioners submitted that virtually two opportunities were granted to the petitioners.

[4]. Having perused the record, it is found that vide order dated 14.08.2018, the case was adjourned to 21.09.2018 and thereafter, the case was taken up on 15.09.2018 and again the case was adjourned to 25.10.2018. In view of aforesaid interlocutory orders as discussed above, the petitioners got only two opportunities i.e. on 14.08.2018 and 25.10.2018.

[5]. In **Kailash Vs. Nanhku and others, 2005(2) RCR (Civil) 379**, provision in terms of Order 8 Rule 1 CPC was

considered and it was held that the provision has to be liberally construed being directory in nature. In an appropriate case, the Court can extend the time for filing the written statement even beyond 90 days. The parameter on which the discretion is to be exercised is based on the conduct of the defaulting party. The view expressed in **Kailash Vs. Nanhku and others case (supra)** has been reiterated in **Sandeep Thapar Vs. SME Technologies Private Limited, 2014(1) RCR (Civil) 729** and it was held that the provision does not impose any embargo on the powers of the Court to extend time for filing written statement beyond the period of 90 days. The provision has to be considered as directory even if the same has been couched in a mandatory overtone. In **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, AIR 2005 SC 3353**, similar proposition was reiterated. The provision has to be applied with some flexibility.

[6]. In view of aforesaid position, I hereby take cognizance of the controversy by not issuing any notice of motion to the respondents as the same would further delay the disposal of the revision petition. Since the rule of procedure is a handmade of justice, therefore, I deem it appropriate to consider the present case to be a fit case for granting indulgence by giving one opportunity to the petitioners to file written statement, however

subject to payment of costs.

[7]. In view of above, the present revision petition is allowed, however subject to payment of costs of Rs.10,000/- to be paid to the plaintiff before the trial Court. Consequently impugned order is set aside. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

14.03.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No