

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

CR-2396-2019 (O&M)
Date of decision: 04.07.2019

Chitranjan Bhatia and another

...Petitioners

Versus

Mamta Bhatia

...Respondent

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

Present: Ms. Harshita, Advocate for the petitioners.

H.S. MADAAN, J. (Oral)

Mr. Varun Goyal, Advocate has appeared on behalf of the respondent by filing vakalatnama, which be taken on record.

On account of failure of defendants to file written statement within stipulated period of 90 days, in terms of Order 8 Rule 1 CPC, the Court of Civil Judge (Jr. Divn.) Jalandhar, vide order dated 17.11.2018, struck off defence of defendants, leaving them aggrieved and they have challenged that order by way of filing the present revision petition, which is being resisted by the plaintiff/respondent.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the revisionist has stated that non filing of the written statement within stipulated period of 90 days of putting in appearance, was not intentional or willful but on account of lack of communication between the defendants and their counsel in the trial

Court and further the defendants would be greatly prejudiced and put to loss, in case, they are not allowed to defend the civil suit.

Though, learned counsel for the plaintiff has controverted such assertions but I find that the omission to file written statement within 90 days does not come out to be a deliberate/intentional act on part of the defendants and the explanation rendered by them appears to be plausible and satisfactory. Furthermore, it is always desirable to decide a *lis* on merits, rather than, non-suiting a party on technical grounds. The interest of justice demands that the defendants should be given an opportunity to present their defence in the suit before the Court, so that, the controversy between the parties can be determined in a proper and judicious manner. Even otherwise, as has been held by a Co-ordinate Bench in case **Indus Towers Ltd. Vs. Manoj Kumar**, 2016(2) LAR 593, provisions of Order 8 Rule 1 CPC are not mandatory but directory, valuable rights of the defendants are involved and the doors of contest should not be shut upon them. Of course for causing delay in the proceedings, they would be burdened with costs. Accordingly, the revision petition is accepted. The impugned order is set aside and the revisionists/defendants are afforded an opportunity to file written statement on the date to be fixed by the trial Court, subject to the petitioners paying costs of Rs.10,000/-. Out of that amount, Rs.5000/- be deposited with District Legal Services Authority, Jalandhar and receipt in that regard be placed on the case file, whereas, Rs.5000/- be paid to the plaintiff. The payment of costs shall be pre-condition for allowing the

revisionists opportunity to file written statement.

A copy of the order be sent to the trial Court through District & Sessions Judge, concerned for information and necessary compliance.

04.07.2019
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No