

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

**C. R No. 4191 of 2019
Date of decision : 10.07.2019**

Mohan LalPetitioner

versus

Pakhar Singh ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vishal Sharma (Vasudeva), Advocate
for the petitioner.

RITU BAHRI, J. (Oral)

Challenge in this petition is to order dated 02.05.2019 passed by learned Civil Judge (Jr. Divn.) Garhshankar, vide which the defence of the petitioner-defendant has been ordered to be struck off.

Learned counsel has referred to zimini orders shows that the petitioner appeared through his counsel on 21.12.2018 and thereafter sought adjournments on 22.01.2019, 11.02.2019, 11.03.2019, 19.03.2019, 19.04.2019 and thereafter, on 02.05.2019, the impugned order has been passed and the defence of the petitioner was struck off.

Learned counsel submits that the petitioner did not attend each and every date before the learned trial Court, so he could not come to know that right to file written statement has been struck off on 02.05.2019. Learned counsel further submits that on 29.05.2019, two plaintiff's witnesses have tendered their examination in chief and now the case is fixed for 19.07.2019.

Reference at this stage can be made to a judgment of this Court in a case of *Labha Singh vs. Tejo Devi and others, 2006(2) RCR (Civil) 77*

wherein this Court allowed the revision petition and the petitioner was granted liberty to file written statement which was not filed earlier within stipulated period. In para 2 to 4, this Court observed as under:-

2. *Their Lordships of Supreme Court in Sardar Amarjit Singh Kalra (dead) by L.Rs. And others v. Parmod Gupta (Smt.) dead) by L.Rs. And others (2003) 3 S.C.C. 272, in para 26 of the judgment had opined as under:-*

"Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice."

3. *View extracted above, was reiterated by their Lordships of Supreme Court in N.Balajit v. Virendra Singh and others, (2004) 8 Supreme Court Cases 312, wherein after noting ratio of the judgment, referred to above, in para 10 of the judgment, it was observed that the procedure would not be used to discourage the substantial and effective justice but would be so construed as to advance the cause of justice.*

4. *In Kailash v. Nanhku and ors., 2005(2) RCR (Civil) 379 and Smt.Rani Kusum v. Smt.Kanchan Devi and ors. 2005(3) RCR (Civil) 727, it has been held by their Lordships of Supreme Court that provisions of Order VIII Rule 1 of CPC are directory and not mandatory in nature.*

In view of facts and circumstances of this case and applying the ratio of above mentioned judgment, revision petition is allowed and order dated 02.05.2019 is set aside, trial Court is directed to give one more opportunity to the petitioner to put on record his written statement on 19.07.2019, subject to payment of Rs.10000/-, as costs, to be paid by the petitioner before District Legal Services Authority, Hoshiarpur.

10.07.2019

G.Arora

(RITU BAHRI)
JUDGE

*Whether speaking/reasoned
Whether reportable*

*Yes
No*