

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

CIVIL REVISION No.1086 of 2020
DATE OF DECISION : 13th FEBRUARY, 2020

M/s. Sakha Engineers Pvt. Ltd. & others

.... Petitioners

Versus

M/s. Om Fire Services, Gurugram & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. S. K. Tripathi, Advocate for the petitioners.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed under Articles 227 of the Constitution of India challenging order dated 09.12.2019 (Annexure P-5) passed by the Civil Judge (Junior Division), Gurugram, vide which the defence of the petitioners/defendants has been struck off.

It is contended by the counsel for the petitioners that earlier the petitioners were proceeded *ex-parte* on 18.01.2019. Thereafter, *ex-parte* proceedings were set aside by the court on 27.08.2019. After this the petitioners/defendants were granted only two opportunities to file written statement. However, the petitioners could not file the same due to unavoidable circumstances. But on 09.12.2019 the trial court has wrongly struck off the defence of the defendants on the ground that the written statement has not been filed on their behalf, within the prescribed period of 90 days; despite having been granted sufficient opportunities. It is further submitted that the trial court is not factually correct in recording that sufficient opportunities have been granted. The petitioners

were granted only one opportunity before passing of the order of striking off the defence. Still further it is submitted that the limit of 90 days, prescribed under the CPC, is not mandatory. Hence, the defence of the petitioners has wrongly been struck off.

Having heard learned counsel for the petitioners; and having perused the file, this court finds that the trial court has not committed any *per se* illegality as such. However, the fact remains that after the *ex-parte* proceedings against the petitioners were set aside, the petitioners have been granted only two opportunities and on the second opportunity itself the defence of the defendants/petitioners has been struck off. Although, the petitioners have exceeded the statutory limit of 90 days in filing their written statement, however, like ordinary practice; they also seem to have fallen prey to the impression that the time limit fixed for filing written statement need not necessarily be followed. Howsoever, mistaken this impression may be, the striking off the defence of the defendants/petitioners would totally take away the defence of the defendants in the suit, thereby putting them under liability which they might be able to deny, given a chance to file their pleadings and to lead the evidence. Therefore, in the interest of justice, it would not be unjustified to grant the petitioners one opportunity to file their written statement, however, by putting them under appropriate financial burden.

In view of the above, the impugned order passed by the trial court is set aside with a further direction that the petitioners be granted one effective opportunity to file their written statement, subject to payment of ₹10,000/- as costs. The costs amount is ordered to be

deposited with the Institute for Blinds, Sector-26, Chandigarh, within a period of three weeks from today.

It is further clarified that the petitioners shall be granted opportunity to file their written statement, only after they produce the receipt of having deposited the costs amount, as ordered above.

Disposed of.

13th FEBRUARY, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>