

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

CR-1111-2020 (O&M)

Date of decision: 14.2.2020

Ranbir Kumar (since deceased) through his LR's

... Appellants

Versus

Ritu Sharma and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Prateek Pandit, Advocate,
for the petitioner.

KARAMJIT SINGH, J. (Oral)

Challenge in this petition filed under Article 227 of the Constitution of India is to the order dated 13.2.2019 (Annexure P-1) whereby defence of defendant No.4-Ranbir Kumar was struck off as he failed to file written statement within the stipulated period of 90 days in the trial Court.

Counsel for the petitioners submitted that on his appearance in the trial Court, defendant No.4-Ranbir Kumar filed application under Order 7 Rule 11 CPC and the same was disposed of on 18.4.2018. Service of the remaining defendants was not complete at that time. Service of the remaining defendants was completed on 13.2.2019, i.e., on the day on which the impugned order was passed. It is further contended that on 13.2.2019, defendant No.4-Ranbir Kumar was seriously ill as he was suffering from cancer and he died on 15.2.2019. A copy of his death certificate is placed on the record. Thereafter, his legal heirs approached the trial Court to implead

impleaded as legal heirs of Ranbir Kumar-defendant No.4 on 4.12.2019.

Learned trial Court has declined to accept the written statement of defendant No.4-Ranbir Kumar under Order 8 Rule 1 CPC for the reason that period of 90 days had expired, which prohibits acceptance of written statement. However, Order 8 rule 1 CPC does not impose an embargo on the power of the Court to extend the limit of 90 days. Such extension may be given for the circumstances which are exceptional and occasioned by reasons beyond the control of the defendants as has been held by the Hon'ble Apex Court in **Sandeep Thapar v. SME Technologies Private Limited**, 2014 (1) RCR (Civil) 729.

In the case in hand, there were exceptional circumstances as defendant No.4-Ranbir Kumar was suffering from cancer and was seriously ill and under these circumstances, he failed to file written statement within the prescribed period of 90 days. It is not disputed that he died on 15.2.2019, i.e., just two days after the passing of the impugned order. The filing of the written statement on behalf of LRs of defendant No.4-Ranbir Kumar is not going to cause any prejudice to the plaintiff. Rather filing of such written statement would avoid miscarriage of justice.

In view of the facts, circumstances and the law position as discussed above, present petition deserves to be allowed. Accordingly, impugned order dated 13.2.2019 (Annexure P-1) is hereby set aside and the petitioners are granted one effective opportunity to file written statement, however, subject to payment of costs of ₹ 5,000/- to be paid by the petitioners to the plaintiff in the trial Court. Needless to mention that payment of costs would be a condition precedent for further defence of the

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondents in order to save them from unnecessary expenses and inconvenience. However, the respondents would be at liberty to file an appropriate application in case they have any grievance to express.

(KARAMJIT SINGH)
JUDGE

February 14, 2020
Paritosh Kumar

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No`