

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 25.02.2020****CR No.1321 of 2020**

Dhian Chand @ Dhianu @ Dhian Singh

...Petitioner

Vs.

Lovely Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vishal Munjal, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. This petition has been filed by the petitioner/defendant No.3 under Article 227 of the Constitution assailing the order dated 20.12.2019 passed by the Civil Judge (Senior Division), Pathankot striking off the defence of defendants No.1 & 3. The impugned order reads as under:

“Case was fixed for filing written statement and reply to stay application by defendant No.1 and 3. Perusal of record reveals that defendant No.1 and 3 have taken sufficient time and opportunities for this purpose, but they failed to file the same. Accordingly, defence of defendant No.1 and 3 stands struck off. As request, case is adjourned to 14.02.2020 for evidence of plaintiff.”

2. I have been apprised that notice of the suit filed against the defendants was issued on 13.09.2019. Petitioner/defendant No.3 appeared on 27.09.2019. The impugned order has been passed on 22.12.2019. Though the order does not mention any provision invoked, but power can be traced to Order VIII Rule 1 CPC. Amended Order VIII Rule 1 CPC provides 30 days for filing written statement and 90 days of grace period on showing

sufficient cause for delay, which is collectively 120 days, whereas the defence of the petitioner/defendant No.3 and defendant No.1 has been struck off after 97 days.

3. Even assuming that service of summons in the suit was made effective on 13.09.2019 thereby bringing the action to the knowledge of the defendants, even then 120 days would not elapse on the date when the impugned order was passed, which has consequently been handed down rather carelessly and hastily without apparent acquaintance with the law on the subject which requires mere calculation of days from the date of service. This is not to say that during the cushion period of 90 days beyond the initial 30 days, an explanation is not required to be furnished by the defendant/s of the reason which caused the delay. Those facts must exist on record and be taken into consideration by passing a speaking order.

4. But without giving a fair and reasonable opportunity to the defendants to explain the delay in presenting the written statement, the trial Court one fine day struck off the defence of the petitioner leading ultimately to lot of wastage of time not only of the parties', but its own time and that of this Court to pass this order only after first time in understanding the grouse. A Civil Judge (Senior Division) should not pass such orders as their inevitably lead to failure of justice. In this, I need not even say that a liberal approach should have been adopted when time-wise the petitioning defendant was within the prescription in Order VIII Rule 1 CPC.

5. For the foregoing reasons, the impugned order dated 20.12.2019 is set aside. The petition is allowed.

6. Petitioner/defendant No.1 would file an application supported by an affidavit giving reasons for the delay beyond 30 days, which would

entitle him to the grace period and accordingly to the outcome of the application, permit the written statement to be filed and accepted in pleadings so that the suit starts a trial on merits and makes headway to reach a just and proper conclusion by declaration of rights-in-issue.

25.02.2020

Vimal

**[RAJIV NARAIN RAINA]
JUDGE**

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes/No