

Sr. No.222

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

CR No.242 of 2021

Date of Decision: 06.04.2021

Gymkhana Club & Ors.

...Petitioners

Vs.

Tarun Awasthi

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.Ravinder Malik, Advocate,
For the petitioners.

ARUN MONGA, J. (ORAL)

1. None has caused appearance on behalf of the respondent despite service of summons effected through his father.
2. Petitioners assail an order dated 13.01.2021 (Annexure P-10) passed by the Learned Civil Judge (Junior Division),Rohtak striking off their defence in the pending civil suit.
3. Learned counsel for the petitioners submits that on appearance, initially the petitioners-defendants had taken few adjournments on 14.11.2019 and 16.01.2020 to file the written statement. When the matter was fixed on 19.03.2020 on account of pandemic, it was adjourned number of times due to administrative instructions. However, when the case was fixed for 13.01.2021, on that date, all of a sudden, the trial Court struck off their defence by recording that mandatory period of 90 days has already expired.

4. According to learned counsel, impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, the petitioners may be permitted to file their written statement in the interest of justice and equity.

5. He further submits that Rules of procedure are handmaids of justice and cannot be allowed to thwart real and substantial justice between the parties. According to learned counsel, the plaintiff has yet to adduce evidence and no prejudice would be caused to the plaintiff if the petitioners are permitted to file their written statement.

6. I have heard learned counsel for the petitioners and perused the case file.

7. I am of the view that provision of Order 8 Rule 1 CPC, ordinarily ought to be adhered to, but the Court below could have permitted to file written statement subject to certain penalty as a deterrent. Otherwise, provision contained in Order 8 Rule 1, *ibid*, has been held to be directory in nature by Supreme Court in ***Salem Bar Association Vs. UOI, 2005(6) SCC 344***. The Courts should not therefore be too harsh to strike off the defence of the defendants at a very early stage.

8. The counsel for the petitioners-defendants undertakes to file the written statement at the next adjourned date.

9. For the foregoing reasons, I deem it appropriate to grant one more opportunity to the petitioners-defendants for filing the written statement subject to costs of Rs.5,000/- to be paid to the plaintiff/respondent, which shall be condition precedent. If the cost is not paid as directed, the order passed already by the court below shall stand restored. To that extent,

the impugned order is modified and the revision petition is allowed,
dispensing with notice to the respondents.

April 06, 2021
Jiten

(ARUN MONGA)
JUDGE

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