

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

C.R No. 1389 of 2020 (O & M)

DATE OF DECISION : 07.10.2021

Manager Shri Ram City Union Finance Limited ...Petitioner

Versus

Radhika and others **...Respondents**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. J. S. Thind, Advocate,
for the petitioner.

ARUN MONGA, J. (ORAL)

This is revision petition under Article 227 of Constitution of India, for setting-aside the impugned order dated 24.09.2019 vide which the learned trial Court has struck off the defence of petitioner/defendant No.5 by denying him the opportunity to file written statement.

2. Learned counsel for the petitioner submits that petitioner is defendant No.5 in civil suit for declaration. Being a necessary party, he authorised Mr. K. K. Malik, Advocate to appear on his behalf and file written statement. Due to death of father of his counsel, mandatory period of 90 days for filing the written statement elapsed. Vide order dated 24.09.2019, the learned trial Court struck off the defence of petitioner/defendant No.5. Hence, the instant revision petition.

3. Elaborating further, learned counsel submits that impugned order has resulted into grave miscarriage of justice and for effective

adjudication of the case, the defendant may be permitted to file his written statement in the interest of justice and equity.

4. 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, no prejudice would be caused to the plaintiff if the defendant/applicant is permitted to file his written statement.

5. Given the nature of order being passed, there is no necessity to issue notice of motion as no prejudice is going to be caused.

6. I have heard learned counsel for the petitioner 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 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 defendant at very early stage.

8. Learned counsel for the petitioner-defendant undertakes to file written statement on the next adjourned date.

9. For the foregoing reasons, it is deemed appropriate to grant one more opportunity to the petitioner-defendant for filing the written statement, subject to costs. By way of imposition of costs, petitioner shall plant 100 trees of deciduous and perennial in nature, of any variety viz. Neem, Amla, Gulmohar and/or Alstonia, in the vicinity where he has been residing. Plantation shall be carried out within six weeks from today, under the supervision of the concerned District Horticulture

Officer, who shall give a letter of proof of having carried out the plantation of the trees as per the orders of this Court. Proof of plantation be also furnished by the petitioner in the trial Court, along with supporting letter from horticulture department. In case, petitioner defaults in doing so, 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.

OCTOBER 07, 2021
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No