

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

CR-476-2021

Date of Decision: 23.03.2021

Birender

...Petitioner

Versus

Neelamand another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. P.K.Chugh, Advocate,
For the petitioner.
(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

Petition assails an order dated 05.12.2019 (Annexure P-6) passed by the trial Court striking off defence of the petitioner and respondent No.2/defendants in the pending civil suit.

2. Learned counsel for the petitioner submits that the petitioner and respondent No.2(defendants) put in appearance on 28.03.2019 and on their request, matter was adjourned to 16.05.2019 for filing written statement. Thereafter, on the request of defendants the matter was again adjourned to 20.08.2019, 15.10.2019 and then to 05.12.2019 for filing written statement. On 05.12.2019 also written statement was not yet filed and the impugned order striking off the defence of the defendants was

passed. The case was adjourned to 05.02.2020 for arguments on stay application.

3. Elaborating further, learned counsel submits that impugned order has resulted into grave miscarriage of justice and for effective adjudication of the case, the defendants may be permitted to file their 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 defendants are permitted to file their written statement.

5. I have heard learned counsel for the petitioner and perused the case file.

6. 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 defendants at very early stage.

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

8. For the foregoing reasons, I deem it appropriate to grant one more opportunity to the petitioner-defendants for filing the written statement subject to costs of Rs.10,000/- to be paid to the plaintiff/respondent, which

shall be condition precedent. If the costs 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.

March 23, 2021
Vandana/ Jiten

(ARUN MONGA)
JUDGE

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