

Sr. No.115

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

CR No.649 of 2021

Date of Decision:17.03.2021

Rajni and another

...Petitioners

Vs.

Baljit Kumar @ Sonu

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sandeep Arora, Advocate,
For the petitioners.

ARUN MONGA, J. (ORAL)

Petitioners assail an order dated 12.02.2020 (Annexure P-3) passed by the Learned Civil Judge (Junior Division), Phillaur striking off their defence in the pending civil suit.

2. Learned counsel for the petitioners submits that on appearance, the petitioners-defendants had taken few adjournments on 11.10.2019, 18.11.2019 and 15.01.2020 for filing the written statement. However on the next date i.e. 12.02.2020, learned Court below refused to accept the written statement by recording that mandatory period of 90 days has already expired and defence of the petitioners was thus ordered to be struck off.

3. Elaborating further, learned counsel submits that the petitioners appeared through counsel on 11.10.2019 and the case was adjourned to 18.11.2019 for filing power of attorney and written statement. On that date power of attorney was filed and the case was adjourned to 15.01.2020 for filing written statement. On 15.01.2020, the matter was again adjourned to 12.02.2020 for filing written statement. On 12.02.2020 written statement

was tendered, but the trial Court refused to accept the same. The case was then adjourned to 09.04.2020 for evidence of plaintiff. 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.

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. The petitioners cannot be made to suffer for fault of their counsel, who failed to file the written statement within time. 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.

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, which is appended herewith as Annexure P-4, only to show his bonafides.

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.5,000/- 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 17, 2021

Vandana/ Jiten

(ARUN MONGA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No