

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

CR-539-2022 (O&M)

Date of decision: 11.03.2022

UKRIND Build Pvt. Ltd.
Versus

...Petitioner

Deepak

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashwarya Bajaj, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

The petitioner is a defendant in a suit for grant of decree of permanent injunction restraining the defendant from alienating his share through a specific rector/kill number and also from delivering possession of his share to vendee. The petitioner is aggrieved of the order passed on 03.07.2019 striking off his defence for not filing his written statement within the statutory period of 90 days, as also the order dated 12.02.2021 wherein the application under Section 151 CPC for permitting the defendant to file the written statement, has been dismissed.

Learned counsel representing the petitioner, while drawing the attention of the Court, to the daily orders passed by the court submitted that the petitioner entered appearance in the suit on 20.03.2019 and the court, after granting one opportunity i.e on 08.05.2019, struck off the defence vide order dated 03.07.2019. From a careful perusal of the daily orders, it is evident that on 20.03.2019 the petitioner entered appearance in the suit. The case was adjourned to 08.05.2019. On that date, on the request of the petitioner, the case was adjourned to 03.07.2019. On 03.07.2019, the defence was struck off as

the petitioner failed to file reply.

Undoubtedly, in view of the amended provisions of the Code of Civil procedure, 1908, written statement is required to be filed within a period of three months i.e 90 days. However, such provision has been interpreted by the Supreme Court in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India AIR 2003 SC 189** to be a directory provision. In the present case, the plaintiff prays for grant of decree of permanent injunction restraining the petitioner from alienating its share and from delivering the possession. In these circumstances, if the petitioner is not an granted opportunity to file his defence, a serious prejudice is likely to be caused.

Keeping in view the aforesaid facts, the order dated 03.07.2019 is set aside. The petitioner is granted one opportunity to file his defence before the next date of hearing i.e 29.04.2022 with a copy in advance to the learned counsel representing the respondent/plaintiff, subject to payment of Rs.5,000/- as costs. It shall be the responsibility of the petitioner to file the written statement within the stipulated time irrespective of the fact that the case is now fixed for 29.04.2022.

Since this order has been passed without issuing notice to the respondent, therefore, the plaintiff shall be at liberty to file application for recall of this order, if so advised.

All the pending miscellaneous applications, if any, are also disposed of.

11.03.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE