

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

CR-512-2022

Date of decision: 15.02.2022

MANOJ KUMAR

...Petitioner

V/S

BHIM SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Wazir Singh, Advocate,
for the petitioner.

(Presence marked through Video Conference)

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ARUN MONGA, J. (ORAL)

Petitioner assails an order dated 03.12.2019 (Annexure P-2) passed by the trial Court vide which his defence has been struck off in the pending civil suit.

2. Learned counsel for the petitioner submits that the petitioner (being LR of one of the defendants) had put in appearance on 14.10.2019. Matter was then adjourned to 03.12.2019 for filing written statement. On 03.12.2019, more time was sought. However, instead vide impugned order, on the same very day, defence of LRs of defendants No.2 and 4 was struck off. Though on the other hand, fresh notice to defendant No.1 was issued for 22.01.2020 on filing of correct/complete address.

3. Learned counsel argues that impugned order has resulted into grave miscarriage of justice. For effective adjudication of the case, the defendants may be permitted to file their written statement in the interest of justice and equity.

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

5. Rules of procedure are handmaids of justice and cannot be allowed to thwart real and substantial justice between the parties. Prejudice

would indeed be caused to the petitioner unless afforded an opportunity to file written statement. Trial in the suit may lead to a futile exercise as there would be no contest in the absence of written statement.

6. Provision contained in Order 8 Rule 1 CPC though ought to be adhered to but Court below could have still permitted to file written statement, subject to certain penalty as a deterrent. Otherwise also, 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 defense of the defendants at 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. To that extent, the impugned order is modified and the revision petition is allowed, dispensing with notice to the respondents. Ordinarily, this Court would have imposed some costs. However, looking at the stage of the trial and the zimni orders appended with the petition and having to bear with extra burden of litigation before this court, the same is not warranted in this case.

9. Disposed of.

(ARUN MONGA)
JUDGE

February 15, 2022
vandana

Whether Speaking/reasoned:	Yes/No
Whether reportable:	Yes/No