

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

CR-106-2023 (O&M)

Date of Decision: 09.01.2023

Ocean Agro (India) Limited

.....Petitioner

Versus

Chander Shekhar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Manish Kumar Singla Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein, under Article 227 of Constitution of India is for setting aside the impugned order dated 29.09.2022 passed by Ld. Civil Judge (JD), Bathinda, whereby the defence of the petitioner-defendant was struck off.

2. 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 its written statement in the interest of justice and equity.

3. 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 indeed be caused to the plaintiff if the defendant is permitted to file its written statement.

4. Given the nature of order being passed, there is no necessity to issue notice to the respondent/plaintiff as no prejudice would be caused to him. Notice to the respondent(s) is dispensed with.

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

6. I am of the view that provision contained in Order 8 Rule 1 CPC, ordinarily ought to be adhered to, but Court below could also have permitted the filing of written statement subject to certain penalty as a deterrent. Further, provision contained in Order 8 Rule 1 CPC, *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 defendant at very early stage.

7. The counsel for the petitioner-defendant undertakes to file the written statement on or before the next adjourned date after 17.01.2023.

8. Keeping in view the facts and circumstances of the case, I deem it appropriate to grant one more opportunity to the petitioner-defendant for filing the written statement subject to costs of Rs.10,000/- to be paid to the respondent-plaintiff, which shall be condition precedent. If the costs are 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.

(ARUN MONGA)
JUDGE

January 09, 2023
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No