

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

137

CR-711-2021(O&M)
Date of Order:21.09.2023

JAGJIT SINGH

.Petitioner

Versus

NIRPAL SINGH AND OTHERS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nirmaljeet Singh Sidhu, Advocate
for the petitioner.ANIL KSHETARPAL, J

1. As per the office report, notice issued to respondent no.1 has been received back duly served, whereas respondent no.2 is reported to have died.
2. Respondent no.1 and 2 jointly filed a suit for grant of decree of declaration. The defence of the petitioner, who is defendant no.1 in the civil suit was struck off on account of the failure to file the written statement within the time prescribed under Order 8 Rule 1CPC.
3. On 22.03.2021, the following order was passed:-

“Learned counsel for the revisionist-petitioner, inter-alia, contends that due to some exceptional and unavoidable circumstances, the revisionist-petitioner (arrayed as defendant No.1 in the Civil Suit pending before the Trial Court) could not file his written reply, well in time and the impugned order dated 06.03.2020 has been passed for striking off his defence whereas the provisions contained in Order 8 Rule 1 CPC are directory in nature.

Notice of motion to respondents No.1 and 2 only,

at this stage, returnable by 13.05.2021.

Let notice be issued to both these respondents for the date fixed through email or any other electronic mode. Dasti as well.

Learned trial Court is directed to adjourn the civil suit between the parties pending before it, beyond the date fixed in this petition.”

4. This court has considered the facts of the case.
5. In Salem Advocate Bar Association vs. Union of India, (2005) 6 SCC 344, the Supreme Court has held that the provisions contained in Order VIII Rule 1 CPC are directory and not mandatory in nature.
6. Keeping in view the facts of the case, this court is of the opinion that the petitioner (defendant no.1) before the trial court deserves one more opportunity to file the written statement.
7. The learned counsel representing the petitioner undertakes to file the written statement within a period of two months which shall be subject to the payment of cost of Rs.5000/-.
8. The legal representatives of respondent no.2 will have the liberty to file an application for recall of this order, if so advised.
9. Disposed of accordingly.
10. All the pending miscellaneous applications, if any, are also disposed of.

September 21, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO