

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

**C.R.No.5415 of 2023
Date of Decision: 15.09.2023**

Indiabulls Housing Finance Limited

.....Petitioner

Versus

Raj Kumar and and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present:- Mr.Rajeev Anand, Advocate
for the petitioner.

GURBIR SINGH, J.

1. Challenge in this petition under Article 227 of the Constitution of India is to order dated 07.07.2023 (Annexure P-4) wherein defence of the petitioner has been struck off.
2. Counsel for the petitioner has argued that respondent-plaintiff No.1 filed suit for possession by way of specific performance. The service has yet not been completed. Counsel for respondent No.6-State Bank of India, made the statement before the trial Court that the written statement filed by the petitioner would be read only on its behalf. The documents were to be collected from respondent No.6-State Bank of India and all the

documents could not be collected from it. Even on 07.07.2023, counsel for the plaintiff was not present in the Court and the learned trial Court passed the order “presence of the plaintiff be awaited for the date fixed” but the defence of petitioner-defendant No.7 was struck off. It is further submitted that the written statement shall be positively filed on the next date fixed before the trial Court.

3. I have heard the submissions of learned counsel for the petitioner.

4. Keeping in view that the service of all the defendants has not yet been completed, even on 07.07.2023 when defence of the petitioner was struck off, none was present on behalf of the plaintiff as well, thus there was no justification on the part of the learned trial Court to struck the defence of the petitioner. In *Salem Advocate Bar Association, Tamil Nadu vs. Union of India AIR 2005 Supreme Court 3353*, it has been held by the Hon’ble Apex Court that in the facts and circumstances of a given case, more than 90 days can be granted for filing the written statement.

5. Keeping in view that the case is at the initial stage, the other party can be compensated with the costs. The impugned order deserves to be set aside. The issuance of notice to the respondent-plaintiff is dispensed with keeping in view if notice is issued to him, respondent-plaintiff would have to incur financial burden and it would further delay the disposal of the case of the plaintiff, adversely affecting the interest of the plaintiff.

6. Accordingly, impugned order dated 07.07.2023 is hereby set aside but subject to payment of Rs.1500/- as costs. One opportunity is

granted to petitioner-defendant No.7 to file the written statement positively on the next date fixed in the trial Court. In case of default, this order shall automatically stand vacated. In case, the respondent-plaintiff is not satisfied with this order, then he can move an application within a period of 30 days for recalling the order.

7. Revision petition stands allowed.

September 15, 2023
poonam

(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>