



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

120

CR No.41-2025

Date of Decision: 09.01.2025

Raj Kumar and others

...Petitioners

V/s

Jaswant Singh

...Respondent

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Divyam Singh, Advocate, for the petitioners.

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**VIKRAM AGGARWAL, J (ORAL)**

The petitioners assail the order dated 21.10.2024 (Annexure P-8) passed by learned Court of Civil Judge (Jr. Divn.), Kalka, vide which the defence of the petitioners (defendants) was struck off on account of the written statement not having been filed.

2. A suit for permanent injunction restraining the petitioners (defendants) from encroaching, blocking the passage/rasta, referred to in the plaint, was filed by the respondent-plaintiff.

3. Notice in the said suit was issued on 15.09.2023 (Annexure P-2) for 19.09.2023. The petitioners-defendants put in appearance before the trial Court on 19.09.2023 but despite repeated opportunities did not file the written statement. Ultimately, vide the impugned order dated 21.10.2024, the defence of the petitioners having been struck off.

4. Learned counsel for the petitioners submits that non-filing of the written statement was on account of certain circumstances which were beyond the control of the petitioners-defendants and that only because the signatures



of one of the petitioners namely Babu Singh could not be obtained, the written statement could not be filed.

5. Learned counsel submits that on 21.10.2024, the defence was struck off, issues were framed by the trial Court and the case is now fixed on 27.03.2025 for evidence of the plaintiff. He submits that the rights of the petitioners would be gravely prejudiced if they are not permitted to file the written statement. Learned counsel submits that one opportunity be granted to the petitioners to file the written statement which shall duly be filed within a period of two weeks from today.

6. I have considered the submissions made by learned counsel for the petitioners.

7. There would be no necessity for issuing notice to the respondent, for in view of the nature of the order that is proposed to be passed, no prejudice would be caused to them.

8. Admittedly, notice in the suit was issued on 15.09.2023 for 19.09.2023. The petitioners-defendants put in appearance before the trial Court on 19.09.2023 but despite repeated opportunities the petitioners did not file the written statement. Ultimately, vide the impugned order dated 21.10.2024, the defence of the petitioners having been struck off.

9. As per provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 (for short the "CPC"), the written statement is to be filed within a period of 30 days from the date of issuance of summons which is extendable up to 90 days. Order 8 Rule 10 lays down the procedure in case failing to present the written statement. In ***Kailash V/s Nanhku and others, 2005(2) RCR (Civil) 379***, the Supreme Court of India opined that the amendment in Rule 8(1) CPC would not impose an embargo on the power of the Court to extend the time further, as no penal consequences as such have



been provided, the provisions being in the domain of the procedural law would not, therefore, be mandatory. It was held that ordinarily the time schedule should be followed as a rule and departure therefrom would be by way of exception and that such extension of time should not be granted as a matter of routine, especially beyond a period of 90 days. It was held that in case any extension is to be granted, the same could be for the good reasons to be recorded in writing may be in brief. Subsequently, the Supreme Court of India was again seized of this issue in the case of ***R.N. Jadi V/s Subhashchandra, 2007 (3) RCR (Civil) 588***, wherein it was opined that the grant of extension of time beyond 30 days is not automatic. The Supreme Court of India held that the power of the Court has to be exercised with caution and for adequate reasons to be recorded and extension of time beyond 90 days must be granted only based on a clear satisfaction of the justification for granting such extension.

10. Reverting to the facts of the present case, no doubt after appearance before the trial Court on 19.09.2023, the written statement was not filed even on 21.10.2024. However, the petitioners have fairly admitted in petition that the written statement was not filed on account of signatures of one of the petitioners not having been obtained and that the written statement would be filed within two weeks from today. In the considered opinion of this Court, the petitioners should not be prevented from presenting their stand before the trial Court. The reasoning given is also reasonable, though not fully justified. Still further, the trial is still at its initial stage. It has to be borne in mind that cases should be decided on merits and not on technicalities. In the considered opinion of this Court, rights of the petitioners would be gravely prejudiced if they are not permitted to file the written statement.



Accordingly, this Court deems it appropriate to grant one more opportunity to the petitioners to file the written statement.

11. In view of the above, the revision petition is allowed and the order dated 21.10.2024 (Annexure P-8) passed by the learned Civil Judge (Jr. Divn.), Kalka, vide which the defence of the petitioners was struck off, is set aside. The petitioners are granted one opportunity to file their written statement within two weeks from today. This shall however, be subject to payment of costs of Rs.20,000/-, which shall be paid to the plaintiff.

(VIKRAM AGGARWAL)  
JUDGE

January 09, 2025  
vcgarg

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No