



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

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CR No.4759 of 2025 (O&M)
Date of Decision: 28.07.2025

Manisha Yadav

...Petitioner

V/s

Chhajia (since deceased) through LRS and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Amit Jain, Advocate, for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

The instant revision petition, preferred under Article 227 of the Constitution of India, assails order dated 15.01.2025 (Annexure P-5) passed by the Court of Civil Judge (Jr. Divn.), Hathin, vide which the defence of the petitioner (defendant No.5) was struck off on account of non-filing of written statement.

2. The facts, as emanating from the revision petition, are that a civil suit for declaration, mandatory injunction and permanent injunction was filed by respondents No.1 to 8 (Chhajia and 7 others) against 7 defendants and a number of proforma defendants. The petitioner (Manisha Yadav) was defendant No.5. The suit was accompanied by an application under Order 39 Rules 1 and 2 CPC (Annexure P-2). Petitioner put in appearance before the trial Court on 09.04.2024 and the case was adjourned to 10.04.2024. On the said date, power of attorney on behalf of the petitioner was filed. Learned counsel had put in appearance on behalf of many other defendants and the matter was pending for service of the remaining defendants. Eventually, by way of the impugned order dated 15.01.2025, the defence of the petitioner was struck off on account of non-filing of written statement by observing that



despite having granted last opportunity, the written statement had not been filed.

3. I have heard learned counsel for the petitioner.

4. Learned counsel for the petitioner submits that learned counsel for the petitioner put in appearance before the trial Court on 09.04.2024 and filed the memorandum of appearance, after which the case was adjourned to 10.04.2024 and on the said date, power of attorney on behalf of the petitioner was filed. He submits that thereafter, the matter remained pending for service of the other defendants after which on 25.09.2024, an application under Order 7 Rule 11 CPC was filed. The matter then remained pending for decision on the said application and suddenly on 15.01.2025, the defence of the petitioner was struck off by stating that despite last opportunity having been granted, the written statement had not been filed whereas actually no last opportunity had been granted.

5. Learned counsel submits that though the statutory period for filing written statement had elapsed, non-filing of written statement was purely unintentional and *bona fide*. He further submits that the case is still at its initial stage and, therefore, one opportunity be granted to the petitioner to file the written statement, failing which the rights of the petitioner shall be gravely prejudiced.

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

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

8. Concededly, the petitioner put in appearance before the trial Court on 09.04.2024 and power of attorney was filed on 10.04.2024. A



perusal of the interlocutory orders which have been reproduced in paragraph 6 of the revision petition show that from 24.04.2024 to 25.09.2024, the matter remained pending for filing of written statement by the defendants who had put in appearance, as also for the service of the other defendants. On 25.09.2024, an application under Order 7 Rule 11 CPC was filed along with an application for bringing on record the legal representatives of certain defendants [defendant No.4 (ii)].

9. The matter then remained pending for filing of reply to the said application and for arguments thereon. Even till 30.04.2025, the matter remained pending for arguments on the application under Order 7 Rule 11 CPC.

10. No doubt, once the petitioner had put in appearance, it was the bounden duty of the petitioner to file written statement within the time period as envisaged under Order VIII Rule 1 CPC. However, it has also to be borne in mind that the case was at its initial stage and even service to many defendants had not concluded. Still further, application under Order 7 Rule 11 CPC was also pending.

11. As per the 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 service of summons which is extendable up to 90 days. Order 8 Rule 10 CPC lays down the procedure to be followed in case of non-filing of 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 should 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 held 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.

12. Reverting to the facts of the present case, as observed, the case is at its initial stage. Application under Order 7 Rule 11 CPC is yet to be decided. No doubt, the petitioner did not file the written statement within the time period as envisaged under Order VIII Rule 1 CPC. However, having considered the matter, this Court is of the opinion that the delay is not such which should disentitle the petitioner from presenting her stand before the trial Court. The reasoning given is also reasonable, though not fully justified. It has to be borne in mind that cases should be decided on merits and not on mere technicalities. In the considered opinion of this Court, rights of the petitioner would be gravely prejudiced if she is not permitted to file the written statement. Accordingly, this Court deems it appropriate to grant one more opportunity to the petitioner to file the written statement.

13. That being so, the revision petition is allowed and the impugned order dated 15.01.2025 (Annexure P-5) passed by the Court of Civil Judge (Jr. Divn.), Hathin, vide which the defence of the petitioner (defendant No.5) was



struck off on account of non-filing of written statement, is set aside. One opportunity is granted to the petitioner to file the written statement, which shall, however, be subject to payment of costs of Rs.15,000/-, which shall be paid to the respondents-plaintiffs.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

July 28, 2025
vcgarg

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