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

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Date of decision:13.01.2025

Amarjit Singh & another

... Petitioners

Vs.

Gurwinder Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

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

...

SUKHVINDER KAUR, J.

1. Instant revision petition has been filed by the petitioners/defendants against the order dated 15.07.2024 (Annexure P-12) passed by the Civil Judge (Jr. Division), Patiala, whereby defence of the petitioners/defendants was struck off and subsequent order dated 11.12.2024 (Annexure P-20), dismissing the application for recalling of the said order.

2. Brief facts which are material for adjudication of the present revision petition are that the plaintiff/respondent filed suit for permanent injunction restraining the defendants from disconnecting or causing any kind of hindrances in the use of electric motor connection bearing No.AP-07/1112, installed in joint land comprising khasra No.928 (2-0), situated at village Dhakraba, Tehsil and District Patiala.

3. Notice of the said suit was issued to the defendants. On

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22.05.2023, defendants were proceeded against ex-parte and then moved application for setting aside said ex-parte order, which was set aside on 23.01.2024. Defendants were directed to file written statement on the next date.

4. It is alleged that thereafter on 04.03.2024, newly engaged counsel for the petitioners filed his Power of Attorney and the matter was adjourned to 10.04.2024 for filing of written statement subject to payment of costs. On 10.04.2024, neither the written statement was filed nor the cost was deposited and the matter was again adjourned to 15.07.2024. On that day, learned trial Court vide the impugned order has ultimately struck off the defence of the defendants. Thereafter, petitioners filed an application under Section 151 CPC for recalling of the said order which was also dismissed by the trial Court vide order dated 11.12.2024. Hence aggrieved against the said orders, the petitioners have knocked the doors of this Court by way of filing of the present revision petition.

5. Learned counsel for the petitioners has contended that the delay in filing of the written statement was not intentional rather it was due to noting down the wrong date in another suit. He has submitted that the impugned orders are quite harsh and in case the petitioners are not granted an opportunity to file written statement, then the same would cause irreparable loss to them and submitted for granting one effective opportunity for filing of the written statement.

6. I have heard learned counsel for the petitioners at length and



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have gone through the records.

7. Perusal of the impugned order reveals that the petitioners inspite of availing numerous effective opportunities for filing their written statement, failed to file the same and ultimately, vide the impugned order dated 15.07.2024 (P-12), defence of the petitioners was struck off.

8. Order 8 Rule 1 CPC casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. Hon'ble the Supreme Court of India in **Kailash Vs. Nanku & others, AIR 2005 SC 2441** has held as under:

“Three things are clear. Firstly, a careful reading of the language in which Order VIII, Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Secondly, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Thirdly, the object behind substituting Order VIII, Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be



speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.

All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.”

9. It has been held in a catena of judgments that the provision under Order 8 Rule 1 CPC is directory and not mandatory and power of Courts to extend time for filing written statement beyond time schedule provided under Order 8 Rule 1 CPC is not completely taken away and in the justified circumstances, the time limit provided under statute for filing of the written statement in civil proceedings can be extended by the Court. Ordinarily, the time schedule prescribed by order VIII Rule 1 CPC has to be honoured and extension of time sought by defendant should not be granted by Court merely for asking so, just as a matter of routine and can be only by way of exception or for reasons assigned by defendant and also recorded in writing by Court to its satisfaction.

10. In the facts and circumstances of the present case, it will be appropriate, if in the interest of justice, one effective opportunity is granted to the petitioners to file their written statement and to defend their case. The



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other party can be well compensated with costs. Therefore, the trial Court is directed to grant one effective opportunity to the petitioners to file their written statement subject to payment of costs of Rs.10,000/- to be paid to the respondent. Accordingly, the impugned orders dated 15.07.2024 (Annexure P-12) and 11.12.2024 (Annexure P-20) are set aside and the revision petition is allowed in the aforesaid terms.

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

(SUKHVINDER KAUR)
JUDGE

13.01.2025
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |