



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

119

CR No.2078-2025

Date of Decision: 04.04.2025

Ram Parkash and another

...Petitioners

V/s

Satnam Singh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Kartik Gupta, Advocate, for the petitioners.

VIKRAM AGGARWAL, J (ORAL)

The present petition is directed against the order dated 05.02.2025 (Annexure P-3) passed by the Court of learned Addl. Civil Judge (Sr. Divn.), Hoshiarpur, vide which the defence of the petitioners (defendants No.1 and 2) (hereinafter referred to as the "defendants") was struck off on account of the written statement not having been filed.

2. A suit for possession of a residential house was filed by respondent No.1-plaintiff.

3. The suit was filed on 04.06.2024 and notice in the suit as well as in the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 (for short the "CPC) was issued. The petitioners-defendants put in appearance before the trial Court on 31.07.2024 but despite repeated opportunities did not file the written statement. Ultimately, vide the impugned order dated 05.02.2025, 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. Learned counsel submits that the



suit is still at the preliminary stage and even defendants No.3 and 4 have not been served as yet. 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 on the date fixed by the trial Court.

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

6. 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.

7. Admittedly, after notice in the suit, the defendants put in appearance before the trial Court on 31.07.2024 but despite repeated opportunities the petitioners did not file the written statement. Ultimately, vide the impugned order dated 05.02.2025, the defence of the petitioners was struck off.

8. 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 lays down the procedure in case of 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.

9. Reverting to the facts of the present case, no doubt after appearance before the trial Court on 31.07.2024, the written statement was not filed even on 05.02.2025. However, the petitioners have stated that the delay in filing the written statement was not intentional and the matter is still at the preliminary stage and even defendants No.3 and 4 are yet to be served. 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.



10. In view of the above, the revision petition is allowed and the order dated 05.02.2025 (Annexure P-3) passed by the Court of learned Addl. Civil Judge (Sr. Divn.), Hoshiarpur, vide which the defence of the petitioners (defendants No.1 and 2) was struck off, is set aside. The petitioners are granted one opportunity to file their written statement. This shall however, be subject to payment of costs of Rs.15,000/-, which shall be paid to the plaintiffs.

(VIKRAM AGGARWAL)
JUDGE

April 04, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No