



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

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CR No.5905 of 2025 (O&M)
Date of Decision: 29.08.2025

Raj Kumar @ Raja

...Petitioner

V/s

Balbir Kaur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Ms. Gurneet Sagoo, Advocate, for the petitioner.

VIKRAM AGGARWAL, J (ORAL)

The instant revision petition, preferred under Article 227 of the Constitution of India, assails order dated 31.05.2025 (Annexure P-2) passed by the Court of Civil Judge (Jr. Divn.), Phillaur, vide which the defence of the petitioner (defendant No.1) 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 partition and permanent injunction was filed by respondent No.1-plaintiff against the petitioner-defendant (and six other defendants). The petitioner (Raj Kumar @ Raja) was defendant No.1. The suit was filed on 03.03.2021. However, the petitioner-defendant put in appearance before the trial Court through his counsel on 03.03.2025, as he was not having any knowledge of the suit having been filed against him, he being an NRI. He was served through publication. On the said date, memo of appearance on behalf of the petitioner was filed. Learned counsel had sought time to file the power of attorney and written statement and the matter was adjourned to 21.04.2025. Again on 21.04.2025, time was sought on behalf of the petitioner-defendant for filing of written statement and the matter was



adjourned to 31.05.2025. Last opportunity was granted. Eventually, by way of the impugned order dated 31.05.2025, the defence of the petitioner was struck off on account of non-filing of written statement by observing that despite having been 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 the petitioner being an NRI did not have the knowledge of the suit having been filed against him. He only came to know about the filing of the suit through publication and immediately engaged a counsel, who put in appearance before the trial Court on 03.03.2025 and filed his memorandum of appearance, after which the case was adjourned to 21.04.2025 and on the said date, power of attorney on behalf of the petitioner was filed and the matter was adjourned to 31.05.2025. On the said date, eventually, the defence of the petitioner was struck off by stating that despite last opportunity having been granted, the written statement had not been filed.

5. Learned counsel submits that though the statutory period for filing written statement had elapsed, non-filing of the 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 03.03.2025 and power of attorney was filed on 21.04.2025 and the defence of the petitioner was struck off on 31.05.2025.

9. 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 the evidence of the plaintiff is yet to be concluded.

10. 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.

11. Reverting to the facts of the present case, as observed, the case is at its initial stage. 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. 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.

12. That being so, the revision petition is allowed and the impugned order dated 31.05.2025 (Annexure P-2) passed by the Court of Civil Judge (Jr. Divn.), Phillaur, vide which the defence of the petitioner (defendant No.1) 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 be filed within a period of two weeks from today or on the next date of hearing whichever is later.

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

(VIKRAM AGGARWAL)
JUDGE

August 29, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No