



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

226

CR-2848-2024**Date of Decision: 03.07.2025****Raja Singh**

....Petitioner

Versus

M/s Sohan Singh and Sons Commission Agents

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Rohan Garg, Advocate for
Mr. Surinder Garg, Advocate
for the petitioner.

Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Divij Dutt, Advocate
for the respondent.

VIKAS SURI, J. (Oral)

1. The present revision petition under Article 227 of the Constitution of India has been filed by the defendant/petitioner praying for setting aside the order dated 10.01.2024 (Annexure P-3), passed by the learned Additional Civil Judge (Senior Division), Sri Muktsar Sahib, whereby the defence of the petitioner has been struck off and he has been proceeded against *ex parte*.

2. Learned counsel for the petitioner submits that the respondent filed a suit for recovery of Rs.5,68,133/- (Rs.4,73,453/- as principal and Rs.94,680/- as interest at the rate of 1% per month from 14.11.2021 to 14.07.2023).



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3. Upon notice of the suit, the petitioner/defendant put in appearance on 30.09.2023 and the hearing was deferred to 03.01.2024 for filing the written statement, which was further adjourned to 10.01.2024, when the impugned order was passed.

4. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Desh Raj vs. Balkishan (Dead) through Proposed Legal Representative Ms. Rohini, (2020) 2 SCC 708***, to contend that the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter for short referred to as 'CPC'), have been held to be directory in nature in the case of non commercial suits. Learned counsel for the petitioner would further contend that one opportunity be granted to the defendant/petitioner to file the written statement on the date already fixed before the trial Court.

5. Per contra, learned senior counsel for the respondent would contend that despite due opportunity having been granted to the petitioner, he failed to file the written statement or put in appearance before the trial Court that led to passing of the impugned order dated 10.01.2024. It is further contended that the interlocutory order dated 30.09.2023, appended with the revision petition, is incorrect as it pertains to some other case. However, in all fairness, he further submits that an incorrect order has been uploaded on the website and as such, apparently the one available online has been appended with the revision petition. He would further point out that on 30.09.2023, the defendant had put in appearance through counsel and the hearing was adjourned to 30.11.2023 for filing the written statement, whereafter the



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proceedings were further deferred to 03.01.2024 and thereafter, adjourned to 10.01.2024, when the impugned order was passed.

6. I have heard learned counsel for the parties and perused the paperbook with their able assistance.

7. In the instant case, the facts are not in dispute. A perusal of Order 8 Rule 1 CPC reveals that it cast an obligation upon the defendant to file the written statement within 30 days from the date of him being served or within the extended time, but not later than 90 days from the date of service of summons. The said provision does not speak of the power of the Court nor explicitly restricts the Court's jurisdiction to accept the written statement filed beyond the time stipulated in the aforesaid provision. In *Des Raj's case* (supra) a three Judge Bench of the Hon'ble Supreme Court had also examined the timeline for filing of written statement and held that in a non-commercial dispute matter, the unamended provision of Order 8 Rule 1 CPC continues to be directory and does not do away with the inherent discretion of the Courts to condone delay.

8. In *Bharat Kalra vs. Raj Krishan Chhabra, 2022 SCC Online 613*, and while placing reliance upon *Kailash vs. Nanko and others, (2005) 4 SCC 480*, the Apex Court held that the provision of Order 8 Rule 1 CPC is not mandatory and the delay in filing of written statement could very well be compensated with costs, but denying the benefit of filing the written statement is unreasonable.

9. Admittedly, the petitioner has availed four opportunities to file the written statement after being served, i.e. from 30.09.2023 to 10.01.2024,



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whereafter the impugned order was passed. It is apparent from the record that the petitioner/defendant had been a little casual in its approach for not having filed the written statement within the stipulated period of 90 days. It is well established that the Court should adopt a liberal approach and the rights of the parties should be adjudicated on the merits of the controversy, rather than throttling them on rigid technicalities. In the present case, the delay is not such that cannot be atoned by imposing costs.

10. In the light of the aforesaid and the law laid down by the Apex Court, I am of the considered opinion that ends of justice would be adequately met if the delay in filing the written statement is condoned, subject to payment of costs. It is well settled that no prejudice would be caused to the other side in case the suit is decided on merits, after affording due opportunity to the defendant to contest the same. It is settled law that the procedural law is always subservient to and is in aid of justice.

11. Learned counsel for the parties have not joined issue on the fact that after passing of the impugned order, no plaintiff's evidence has been recorded till the institution of the instant petition before this Court.

12. Accordingly, the present revision petition is allowed. The impugned order dated 10.01.2024 is set aside, subject to payment of Rs.15,000/- as costs, to be paid to the plaintiff-respondent and one opportunity is granted to petitioner (defendant) to file his written statement on or before the date to be fixed by the trial Court. It is made clear that failing to file the written statement or to pay costs in terms of this order, the petitioner/defendant would not be entitled to any further opportunity for the



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said purpose and the trial Court would proceed with the matter without this order having any bearing on the trial.

13. The revision petition is allowed in the aforesaid terms.

July 03, 2025
Varinder

(VIKAS SURJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No