

**(2012) 03 P&H CK 0059**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 1547 of 2012

Amarjeet Kaur and another

APPELLANT

Vs

Bant Singh and another

RESPONDENT

**Date of Decision:** March 12, 2012

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 1

**Hon'ble Judges:** Nawab Singh, J

**Bench:** Single Bench

**Judgement**

Nawab Singh, J.

This defendants revision is directed against the order dated September 6th, 2011 passed by Additional Civil Judge (Senior Division), Ratia whereby defence of the petitioners-defendants was struck off on account of non filing of Written-statement.

2. Learned counsel for the petitioners has urged that he be granted one opportunity to file written-statement on the date fixed, that is, March 15th, 2012.

3. In Shaikh Salim Haji Abdul Khayumsab vs. Kumar & others 2005 (4) RCR (Civil) 823, Hon"ble Supreme Court commented upon the import of Order 8 Rule 1 of CPC by observing as under:-

Order VIII, Rule 1 after the amendment 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.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. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII, Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to 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. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice 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.

The procedural law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justiciae* where the tragic sequel otherwise would be wholly inequitable. -Justice is the goal of jurisprudence -processual, as much as substantive. (See [Sushil Kumar Sen Vs. State of Bihar,](#)

4. In view of the aforesaid dictum of law, this revision petition is allowed and the order dated September 6th, 2011 is set-aside. Consequently, the petitioners are accorded one opportunity to file written statement on the date fixed before the trial Court, that is, March 15th, 2012, subject to conditional costs of Rs. 1,000/- .

5. This petition is disposed of without issuing notice to the respondents with a view to impart substantive justice to the parties and to save the huge expenses, which may be incurred by the respondents as also in order to avoid unnecessary delay in adjudication of the matter. Still, if dissatisfied, the respondents may move this court for recalling this order. In this regarding, reliance can be placed on a Division Bench judgment of this Court rendered in Batala Machine Tools Workshop Cooperative vs. Presiding Officer, Labour Court, Gurdaspur (CWP No. 9563 of 2002) decided on June 27th, 2002.