

**(2010) 09 P&H CK 0251**

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

**Case No:** Case No. C.R. No. 6019 of 2010

Nirmal Singh

APPELLANT

Vs

Jagroop Singh

RESPONDENT

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**Date of Decision:** Sept. 17, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 1
- Constitution of India, 1950 - Article 227

**Hon'ble Judges:** L.N. Mittal, J

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

L.N. Mittal, J.

Defendant Nirmal Singh has filed this revision petition under Article 227 of the Constitution of India assailing order dated 19.08.2010 (Annexure P-1) passed by learned Civil Judge (Junior Division), Jagraon.

2. Respondent Jagroop Singh has filed suit against the petitioner. The case was fixed in the trial court for 28.07.2010 for filing of written statement by the defendant-petitioner. On that date, defendant-petitioner filed written statement along with application for permission to place on record the written statement. However, at the same time, plaintiff-respondent moved application on the same date for striking off the defence of defendant for having not filed the written statement within 90 days from the service of summons alleging that the defendant received the summons on 19.04.2010.

3. Learned trial court, vide impugned order Annexure P-1, has allowed the application moved by plaintiff-respondent and has struck off the defence of defendant-petitioner and has dismissed the defendant's application for placing on record written statement as infructuous. Feeling aggrieved, the defendant has preferred the instant revision petition.

4. I have heard learned Counsel for the petitioner and perused the case file.

5. Learned Counsel for the petitioner contended that the petitioner was served for 18.05.2010 and accordingly, put in appearance through counsel in the trial court on 18.05.2010 for the first time and demanded copy of plaint which had not been supplied to him with the summons and accordingly, copy of plaint was supplied on 18.05.2010 and the case was adjourned to 04.06.2010 for written statement and again to 28.07.2010 for the same purpose and accordingly, defendant filed written statement on 28.07.2010 and therefore, there was no occasion for the trial court to strike off the defence of defendant-petitioner.

6. I find considerable merit in the aforesaid contention of counsel for defendant-petitioner. It is correct that according to Order 8 Rule 1 of the CPC (in short - CPC), written statement has to be filed within 30 days from the date of service of summons and the said period can be extended to not later than 90 days from the date of service of summons. In the instant case, however, the defendant was served for 18.05.2010 and accordingly, put in appearance through counsel in the trial court on 18.05.2010. The trial court adjourned the case to 04.06.2010 and then to 28.07.2010 for filing written statement. It appears that the second adjournment was a bit longer one on account of intervening summer vacation from 16.06.2010 to 15.07.2010. When the trial court itself adjourned the case to 28.07.2010 for filing of written statement, and on that date, the defendant filed the written statement, then there was no occasion for the trial court to strike off the defence of the defendant for non-filing of written statement. Order 8 Rule 1 CPC stipulates that the Court shall allow the defendant to file written statement on such other day, as may be specified by the Court, but which shall not be later than 90 days from the date of service of summons. In the instant case, however, the trial court itself specified 28.07.2010 as the date on which the defendant was allowed to file written statement and accordingly, if the defendant filed the written statement on 28.07.2010, there was no lapse on the part of the defendant. Even otherwise, provision of Order 8 Rule 1 CPC has been held to be directory and not mandatory, although it is required to be followed broadly. In the instant case, grave injustice has been caused to the defendant-petitioner by passing the impugned order. The impugned order is completely erroneous and illegal and unsustainable.

7. I intend to dispose of the instant revision petition without issuing notice to the plaintiff-respondent so as to avoid further delay in the disposal of the suit and to save plaintiff-respondent of the expenses, which he may have to incur in engaging counsel for the revision petition, if notice thereof is issued to him.

8. For the reasons aforesaid, the instant revision petition is allowed and impugned order Annexure P-1 passed by the trial court is set aside and written statement already filed by the defendant in the trial court is ordered to be taken on record and the trial court shall take the same into consideration and shall proceed to adjudicate upon the suit in accordance with law. However, the defendant-petitioner shall pay

Rs. 2,500/- as cost precedent to the plaintiff-respondent.