

## Himmat Singh Vs Sharda Bansal

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

**Date of Decision:** Oct. 8, 2013

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

**Bench:** Single Bench

**Advocate:** J.S. Lalli, for the Appellant;

**Final Decision:** Disposed Off

### Judgement

Paramjeet Singh, J.

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 29.08.2013 (Annexure P-2) passed by learned Civil Judge (Junior Division), Ludhiana, whereby defence of the petitioner has been struck off for

non-filing of written statement. Briefly stated, the facts of the present case are that respondent/plaintiff filed a suit for permanent injunction

restraining the petitioner/defendant, his agents, attorneys, associates from interfering in the peaceful user of the plaintiff and his tenant over the suit

property. In the suit as well as the application under Order 39 Rules 1 and 2 CPC notice was issued to the petitioner for 28.06.2013. However,

for the date fixed petitioner/defendant could not be served and fresh notice was issued for 11.07.2013. On 11.07.2013 counsel for the

petitioner/defendant appeared and sought time for filing the written statement and the case was adjourned to 15.07.2013. On 15.07.2013, counsel

for the petitioner moved an application under Order 11 Rule 14 CPC for production of original lease deed and sale deed in order to file effective

written statement. Notice of the said application was issued for 30.07.2013 for filing reply. Due to non-filing of reply by the respondent/plaintiff

case was adjourned to 07.08.2013. On 07.08.2013 application filed by the petitioner/defendant was disposed of and case was adjourned to

16.08.2013. On 16.08.2013 on the request of the learned counsel for the petitioner/defendant case was adjourned to 23.08.2013 for filing the

written statement. On 23.08.2013 Presiding Officer was on casual leave and case was taken up on 24.08.2013 and was adjourned to

29.08.2013. Again on 29.08.2013, counsel for the petitioner/defendant sought adjournment for filing the written statement, which was declined

and the defence of the petitioner was struck off. Hence this revision petition.

2. I have heard learned counsel for the petitioner and perused the record.

3. Learned counsel for the petitioner contended that delay in filing written statement by the petitioner is not intentional, rather bona fide one. The

learned counsel further prayed that one opportunity may be given to the petitioner to file written statement which is necessary for proper

adjudication of the suit.

4. I have considered the contentions of learned counsel for the petitioner.

5. Through this petition, the petitioner seeks permission to file written statement. It is correct that proviso to Order 8 Rule 10 of CPC lays down

that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed

by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. In the context of the

provision, despite use of the word "shall", the Court has been given the discretion to pronounce or not to pronounce the judgment against the

defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of

Order 8 Rule 1 and Rule 10 of CPC, the doctrine of harmonious construction is required to be applied. The effect would be that under Order 8

Rule 10 of CPC, the Court has discretionary power to allow the defendant to file written statement even after expiry of period of 90 days provided

in Order 8 Rule 1 of CPC. Moreover, the said provision being rule of procedure has to be held to be directory and not mandatory in nature. This

provision has to be applied with some flexibility and not with rigidity or inflexibility. Rules of procedure are handmaid to the administration of justice

and are meant to meet the ends of justice and not to thwart or obstruct the same. In Salem Advocate Bar Association, Tamil Nadu Vs. Union of

India (UOI), , it has been held by the Hon"ble Supreme Court that in the facts and circumstances of a given case, more than 90 days can be

granted for filing written statement. In the present case, this Court is of the considered opinion that ends of justice would be met if the petitioner is

granted one opportunity to file written statement in trial court subject to costs. However, respondent/plaintiff shall also be given an effective

opportunity to file replication to written statement of petitioner, if she so desires.

6. For the reasons stated above, the impugned order dated 29.08.2013 (Annexure P-2) is set aside. Petitioner is granted one opportunity to file

written statement, subject to costs quantified at Rs. 5,000/- to be deposited with the District Legal Services Authority, Ludhiana.

7. Disposed of.

8. This revision has been disposed of without notice to the respondent with a view to avoid delay and expense in view of the nature of the order

that has been passed. Liberty is granted to the respondent to move this court if she is aggrieved against the order.