

**IN THE HIGH COURT OF JUDICATURE FOR  
RAJASTHAN AT JAIPUR BENCH, JAIPUR****ORDER****S.B.CIVIL WRIT PETITION NO.7516/2009.***Hari Om alias Hari Mohan.***VERSUS***The Civil Court (SD), Laxmangarh, District Alwar & Anr.***31.03.2010.****HON'BLE MR.JUSTICE DALIP SINGH**

Mr.Sudesh Bansal, for the petitioner.

Mr.Aatish Jain, for the respondent No.2.

\*\*\*\*\*

Matter comes up on the application No.12414 submitted by the petitioner for early listing of the case. The same is allowed.

Learned counsel for the parties submitted that the writ petition itself be heard today.

With the consent of the parties, the writ petition itself was heard today at the admission stage.

By the impugned order dated 05.05.2009 the learned trial court has closed the right of the defendant-petitioner to file the written statement. While it is true that the defendant-petitioner was served and put his appearance before the court on 10.12.2008. Nonetheless, there appears to be some justification on the part of the petitioner as submitted by the learned counsel for the petitioner that on account of two applications having been filed one by the plaintiff and the other by the defendant-the petitioner was misled and prevented from filing the written statement while these applications remained

pending.

The application submitted by the plaintiff was in respect of the death of the defendant No.2 and consequent deletion of the name of defendant No.2 from the array of parties. The defendant at the same time filed an application under Order 7 Rule 11 C.P.C. for rejection of the plaint.

I have considered the submissions of the learned counsel for the parties. In the facts and circumstances, I find that while there may be some justification on the part of the petitioner for not having filed the written statement. However, it was the duty of the petitioner to have first filed the written statement and raised all the objections therein rather than by way of application alone and despite filing the written statement the application under Order 7 Rule 11 C.P.C. could also have been filed.

In the facts and circumstances, therefore, in the interest of justice, I deem it just and proper to allow the petitioner to file his written statement on the next date which is already fixed before the learned trial court subject to the payment of cost of Rs.2,000/- to the plaintiff. No further time shall be allowed in this regard.

Consequently, the writ petition as well as the stay application stand disposed of.

**(DALIP SINGH),J.**

**Solanki DS, Jr.P.A.**