

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

CR No.2961 of 2014
Date of decision: 29.4.2014

Surjit Singh

...Petitioner/Defendant No.1.

Versus

Ajaib Singh and ors.

...Respondents/defendants.

CORAM: HON'BLE MR.JUSTICE JASWANT SINGH

Present: Mr. Sukhwinder Singh Nara, Advocate
for petitioner/defendant No.1.

Jaswant Singh, J.

Defendant No.1 – vendor has filed the instant revision petition under Article 227 of the Constitution against the order dated 24.3.2014 (Annexure P-5) passed by the learned Additional Civil Judge (Sr. Divn.), Bilaspur, whereby his defence has been struck off for non-filing of the written statement within the maximum time of 90 days.

It is apparent that contesting respondent No.1 and 2 – plaintiffs have filed a suit for symbolic possession by way of specific performance of an agreement to sell dated 14.10.2004 measuring 7 Kanals 8 Marlas, out of the total joint land of 304 Kanals and 6 Marlas, fully described in the plaint. The consequential relief prayed is for restraining the defendants/petitioners from interfering in his peaceful possession over the

aforesaid suit land with further mandatory injunction directing the petitioner-defendant No.1 to repay the loan obtained by him from defendants No.2 to 5 qua the suit land.

It is submitted that the reply could not be filed within time because of the reason that the relevant registers from the Stamp Vendor related to the year 2004 were not being produced by Data Ram, Stamp Vendor, thereby causing delay in filing of the written statement. It is further submitted that no substantial proceedings in the suit have taken place since it is still pending for 5.5.2014 for filing of written statement by the other defendants. Thus, the prayer is for grant of one opportunity to file the written statement.

I have heard learned counsel for the petitioner – defendant No.1, this Court is inclined to accept the plea of the petitioner – defendant for the reason that the Hon'ble Supreme Court in *Kailash V. Nankhu and others* *2005(4) SCC 481* has held that the time limit provided for filing of the written statement under Order 8 Rule 1 CPC is directory in nature being in the realm of procedural law. In the present case the reason for non-filing of the written statement appears to be bona-fide and therefore falls within the parameters permitted by the Hon'ble Supreme Court.

Accordingly, the present revision is allowed, the impugned order dated 24.3.2014(Annexure P-5) is set aside to the extent it strikes off the defence of petitioner-defendant No.1. The petitioner-defendant No.1 is granted one opportunity to file the written statement within two weeks from today, subject to payment of Rs.5,000/- as costs in equal shares to the plaintiffs by way of demand draft as a condition precedent.

This order is being passed without issuing notice to the contesting respondents – plaintiffs to avoid unnecessary expenses and delay in

the matter apart from the fact that they have been adequately compensated by payment of costs.

Copy of the order be given dasti on payment of usual charges.

29.4.2014
Brij

(JASWANT SINGH)
JUDGE