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Para v. Mahindo , (2022-2)206 PLR 690, 2022 PLRonline 0166

[punjab and haryana](#) HIGH COURT

Before : Mrs. Justice Manjari Nehru Kaul

PARO and others – Petitioners,

Versus

MAHINDO – Respondent.

CR-1660-2020

Civil Procedure Code, 1908 (V of 1908) Order 8 Rule 1 – Provisions are no doubt are directory in nature, however, at the same time the Courts must exercise their discretion to condone the delay, if any, in [filing](#) the [written statement](#) after exercising due circumspection and in case there appears to be an attempt on the part of the defendant to engage in dilatory tactics, the Courts should nip the same unhesitatingly. [Para 4]

Mr. Prabhjot Singh Chahal, for Mr. Kamal Narula, for the petitioners.

Manjari Nehru Kaul, J. (ORAL) – (20.05.2022) – The petitioners/defendants are impugning order dated 21.11.2019, passed by the learned Additional Civil Judge (Sr. Divn.), Ferozepur, vide which their defence was struck off in the civil suit filed by the respondent/plaintiff.

- Learned counsel for the petitioners submits that the petitioners were unable to file their written statement initially for genuine [reasons](#) which were beyond their control. He further submits that no doubt the trial Court did grant one last opportunity to the petitioners to file their written statement, subject to payment of costs of Rs.500/-, however, they were unable to do so on account of ill-health of petitioner/defendant No.1, who is an old lady. Learned counsel submits that since the trial is still at an initial stage, it would not in any manner adversely affect the progress of the trial in case one last effective opportunity is granted to the petitioners to file their written statement.
- I have heard learned counsel and perused the material on record.
- The provisions of Order 8 Rule 1 of the [cpc](#) no doubt are directory in nature, however, at the same time the Courts must exercise their discretion to condone the delay, if any, in filing the written statement after exercising due circumspection and in case there appears to be an attempt on the part of the defendant to engage in dilatory tactics, the Courts should nip the same unhesitatingly.
- Adverting to the case in hand, the petitioners were granted four opportunities to file their written statement, however, they failed to do so.
- Be that as it may, if the petitioners are not granted one more opportunity to file their written statement, they would suffer irreparable loss which in turn would result in miscarriage of justice. Therefore, for just and proper adjudication of the case, this Court deems it appropriate to grant one last effective opportunity to the petitioners to file their written statement.
- In the wake of the above, without issuing notice to the respondent, to avoid any further delay as well as expenses which she shall have to incur to defend these proceedings, the impugned order dated 21.11.2019, is set aside. The instant [revision](#) petition is allowed in the following terms:-

- The petitioners are granted one last effective opportunity to file their written statement.
- In the event of default by the petitioners, the case shall not be adjourned any further for filing of their written statement and consequently their defence shall be deemed to be struck off.
- This, however, shall be subject to payment of costs in the sum of Rs.5,000/- to be paid to the respondent which shall be a condition precedent.

SS

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