

Varun Electronics Vs. Daewoo Anchor Electronic Ltd.

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Court : Punjab and Haryana

Decided On : Jan-17-2006

Reported in : (2006)143PLR440

Judge : Hemant Gupta, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 8, Rule 1

Appeal No. : Civil Revision No. 6022 of 2005

Appellant : Varun Electronics

Respondent : Daewoo Anchor Electronic Ltd.

Advocate for Pet/Ap. : Puneet Gupta, Adv.

Judgement :

Hemant Gupta, J.

1. The challenge in the present revision petition is to the order dated August 10, 2004 passed by the learned Civil Judge (Senior Division), Faridabad whereby the defence of the petitioner was struck off for not filing written statement within 90 days.

2. It has been held in *Kailash v. Nanhkhu and Ors.* : AIR 2005 SC2441 , *Salem Advocate Bar Association, Tamil Nadu v. Union of India* 2005(3) R.C.R. (Civil) 530

and Shaikh Salim Haji Abdul Khayumsab v. Kumar and Ors. : AIR 2006 SC396 that the provisions of Order 8 Rule 1 are not mandatory and if sufficient cause is shown, the defendant could be permitted to file written statement beyond a period of 90 days.

3. In the present case, the defendant had put in appearance on 7.1.2003. An application was filed by the defendant on the said date for production of certain documents. Such documents were supplied on 14.5.2004 and the case was fixed for 10.8.2004 for filing written statement. On account of failure to file the written statement on the said date the defence was struck off.

4. Learned Counsel for the petitioner argued that though the documents were supplied on 14.5.2004 but no reply to the application was filed and in fact the last opportunity recorded in the order dated 14.5.2004 was in relation to the reply to be filed by the plaintiff in relation to the application filed by the petitioner. The petitioner could not file written statement on account of the fact that the petitioner works and resided at Karnal. Even goods were delivered at Karnal. There was some delay in filing of the written statement but it cannot be said that the delay on the part of the petitioner is intentional.

5. In view of the above, I find that the order dated August 8, 2004 is wholly unjustified and the same is set aside. The petitioner is permitted to file written statement subject to payment of Rs. 5000/- as costs for delay in filing the written statement.

6. The written statement shall be now filed before the trial Court on 20.2.2006. If the petitioner fails to file written statement on the said date and also to pay costs, the learned trial court shall proceed to decide the suit. But if the written statement is filed the Court shall grant two opportunities to both the parties to lead evidence and decide the suit expeditiously.

7. Civil Revision stands disposed of accordingly.