

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

CR No. 6471 of 2012 (O&M)
Date of decision: July 5, 2013

Jasmal Singh

...Petitioner

Versus

Gian Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. GS Ghuman, Advocate,
for the petitioner.

Mr. PS Jammu, Advocate,
for the respondent.

K. KANNAN, J. (Oral)

The revision is against the order receiving the written statement in a summary proceedings initiated under Order 37 of the Code of Civil Procedure. The least detail what is necessary for consideration is that the summons for judgment was delivered on the respondent on 23.8.2012 and till that date, the defendant did not move any application for leave to defend. Instead, it appears that that the defendant was served with notice of appearance but he did not apply to the court for leave to defend. The court had, however, received the written statement and posted the case for further hearing. The procedure adopted by the court below is erroneous. The defendant had no power to file the written statement without seeking for permission to defend and that permission shall be obtained before judgment is delivered. Admittedly, the summons for judgment was delivered on 23.8.2012 and the court was only required to pass further orders, if the defendant had not moved any application for leave to defend.

Counsel appearing on behalf of the respondent states that the

respondent had already filed the written statement in Court and it contained the grounds for his defence.

The respondent/defendant cannot devise his own procedure for receiving the written statement contrary to the provision contained under Order 37 of the Code. The Court has also no power to dilute the standard and chart out a procedure for the defendant which is out of sync with the mandate contained under Order 37 of the Code. The written statement already filed is ordered to be eschewed from the file. The court shall pass further order on the summons for judgment. If the defendant adopts any procedure for obtaining leave through any application, he is at liberty to approach the court and the court will consider such plea and proceed with further process of the case in accordance with law.

The civil revision is allowed on the above terms.

July 5, 2013
prem

(K.KANNAN)
JUDGE