

**CM No.14944-CII of 2019 in
RA-CR No.66 of 2019 in/and
CR No.2031 of 2019(O&M)**

1

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

**CM No.14944-CII of 2019 in
RA-CR No.66 of 2019 in/and
CR No.2031 of 2019(O&M)**

Date of Decision: 26.08.2019

Sanjiv Bajaj

.....Petitioner

Versus

Rajiv Bajaj and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Keshav Gupta, Advocate
for the non-applicant/petitioner.

Mr. N.S. Swaitch, Advocate
for the applicants/respondents No.1 and 2.

RAJ MOHAN SINGH, J.

CM No.14994-CII of 2019

For the reasons mentioned in the application, the same
is allowed.

Accompanying document is taken on record.

RA-CR No.66 of 2019 & CR No.2031 of 2019 (O&M)

CR No.2031 of 2019 was decided by this Court vide
order dated 12.04.2019. One opportunity was given to the

petitioner to file written statement on the date already fixed before the trial Court. Revision petition was allowed subject to payment of costs of Rs.10,000/- to be paid to the plaintiffs. Payment of cost(s) was held to be a condition precedent for granting indulgence by the trial Court in the aforesaid context.

29.04.2019 was the date fixed before the trial Court, but the cost(s) was not deposited/paid by the petitioner on 29.04.2019. Order dated 29.04.2019 passed by the trial Court did not contain any reference about the amount of costs offered by the defendant. The case was further adjourned to 01.05.2019 for payment of costs. Written statement was filed only on 01.05.2019.

Evidently, the order dated 12.04.2019 passed by this Court was not complied with. Written statement was to be filed by the defendant/petitioner on the date already fixed before the trial Court i.e. 29.04.2019 subject to payment of costs.

Learned counsel for the non-applicant/petitioner stated that on 29.04.2019, a demand draft was duly prepared towards payment of costs, but the same could not be tendered in Court as the learned counsel for the non-applicant/defendant was busy in High Court.

Since the order dated 12.04.2019 has not been

complied with, therefore, I deem it appropriate to accept the review application and recall the order dated 12.04.2019.

It would not be out of context that at the time of passing of order dated 12.04.2019, ratio laid down by the Hon'ble Apex Court in **M/s SCG Private Limited Vs. K.S. Infrastructure and others, 2019 RCR (Civil) 249** was not brought to the notice of this Court. According to the aforesaid case, the Court cannot grant extension beyond 120 days from the date of service of summon. The Hon'ble Apex court has also relied upon ratio laid down in **Kailash Vs. Nanhku and others, 2005(2) RCR (Civil) 379** and **Salem Advocate Bar Association Vs. Union of India, 2005(3) RCR (Civil) 530** while deciding a Commercial Court case. It has been held that the period upto 90 days is discretionary subject to payment of costs, but the period beyond 120 days in any case would forfeit the right of the defendant to file written statement.

In the instant case, defendant/petitioner appeared in the trial Court on 10.03.2016 and till 13.09.2016 written statement was not filed. Period of about 180 days has expired and the defence of the defendant was struck off.

In view of ratio laid down in **M/S SCG Private Limited's case (supra)**, the Court cannot grant extension

beyond 120 days from the date of service of summon. The aforesaid ratio was relied by this Court in **CR No.3587 of 2019** titled **Lovepreet Singh and another Vs. Gurpreet Singh** decided on 29.05.2019 to observe that the expiry of period of 120 days would forfeit the right of the defendant to file written statement.

In view of observations made by the Hon'ble Apex Court in **M/S SCG Private Limited's case (supra)**, no indulgence can be granted in this revision petition. This revision petition is accordingly dismissed.

26.08.2019

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No