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

**Civil Revision No.3654 of 2019 (O&M)
Date of Decision: 22.07.2019**

Micky Sahni

.....Petitioner

Vs

Shamshad Ali and others

....Respondents

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

Present: Mr. Arjunveer Sharma, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner against the order dated 29.04.2019 passed by the Addl. Civil Judge (Sr. Divn.) Ludhiana vide which the defence of the petitioner/defendant No.3 in a suit for possession by way of specific performance was struck off for non-filing of written statement within the time prescribed.

[2]. It is apparent from the record that the petitioner/defendant No.3 made his appearance before the trial Court on 30.11.2018. Thereafter he did not file written statement even till date i.e. 29.04.2019 when the impugned order was passed striking off the defence of the petitioner.

[3]. The trial Court has observed that statutory period of 90

days has already expired and the petitioner/defendant No.3 has not cared to even file his written statement within the extended period. Faced with the situation, the trial Court had no option, but to proceed to strike off the defence of the petitioner/defendant No.3 for want of written statement.

[4]. Provision in terms of Order 8 Rule 1 CPC has been couched in a mandatory overtone by fixing time of 30 days for filing written statement from the date of service of summons. The aforesaid provision has been held to be directory by the Hon'ble Apex Court on the strength of ratio as laid down in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, 2005(3) R.C.R. (Civil) 530.** It was so in the context of extended period where the Court can allow the defendant to file written statement in the extended period of 90 days as may be specified by the Court for the reasons to be recorded in writing, but not later than 90 days from the date of service of the summons. Even the period of 90 days can be extended in a given situation upto 120 days by showing sufficiency of cause by the defendant subject to satisfaction of the Court and for the reasons to be recorded including imposition of punitive costs. Even though the provision has been held to be directory, it does not mean that the time for filing written statement can be stretched to infinity.

[5]. In case of commercial Court, the Hon'ble Apex Court in **M/s SCG Contracts India Pvt. Ltd. vs. K.S. Chamankar Infrastructure Pvt. Ltd. and others, 2019(2) R.C.R. (Civil) 249 (SC)** has held that the Court cannot grant extension for filing writing statement beyond the period of 120 days from the date of service of summons. The period upto 90 days for filing written statement is discretionary and the discretion lies with the Court in a given situation based on sound principle subject to imposition of adequate costs. The period beyond 120 days would forfeit the right of defendant to file the written statement. While deciding the aforesaid case, the Hon'ble Apex Court relied upon the ratio of **Kailash vs. Nanhku, (2005) 4 SCC 480** and **Salem Advocate Bar Association's** case (supra).

[6]. Section 16 of the Commercial Courts Act provides for amendment in the CPC, wherein it has been provided that the commercial division/commercial court shall follow the provisions of CPC as amended by the said Act.

[7]. The amendment made in the Commercial Courts Act in any case has not taken away the rigor of Order 8 Rule 1 CPC in ordinary suits. Even though the provision is held to be directory in **Salem Advocate Bar Association's** case (supra), but the same does not mean that the extended period of 90 days can be stretched further for indefinite period. The

discretion for allowing the defendant to file written statement within the extended period of 90 days is subject to satisfaction of the court including some imposition of punitive costs. The discretion has to be exercised in a judicious manner and not to make the provision i.e. Order 8 Rule 1 CPC as nugatory.

[8]. In the instant case, the period of about 150 days has expired and no explanation has come forth on behalf of the petitioner for such delay to justify inaction on his part. The conduct of the petitioner in not filing the written statement even within 120 days is enough to forfeit his right to file written statement.

[9]. In view of aforesaid, this revision petition is found to be totally devoid of merits and is accordingly dismissed.

July 22, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No