

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

Date of Decision: 29.08.2019

1. CR No.4412 of 2019(O&M)

Karamjit Singh

.....Petitioner

Versus

Balwinder Singh and others

.....Respondents

2. CR No.4581 of 2019(O&M)

Chhoti

.....Petitioner

Versus

Balwinder Singh and others

.....Respondents

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

Present:Mr. R.S. Chauhan, Advocate
for the petitioner in CR No.4412 of 2019.

Mr. P.K. Suri, Advocate
for the petitioner in CR No.4581 of 2019.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.4412 of 2019 titled Karamjit Singh Vs. Balwinder Singh and others and CR No.4581 of 2019 titled Chhoti Vs. Balwinder Singh and others are being

decided. Facts are culled out from CR No.4412 of 2019.

[2]. Petitioner has challenged the order dated 29.05.2019 passed by Additional Civil Judge (Senior Division), Patiala, vide which petitioner was permitted to join the proceedings in the suit from the present stage without allowing him to file written statement.

[3]. Perusal of the record would show that defendant No.2/petitioner appeared in person before the Court on 04.01.2016 and the case was adjourned for summoning of remaining witnesses. Thereafter, petitioner kept on appearing in the suit, but he was proceeded against *ex parte* on 02.01.2017 when he did not appear in the Court. The stand of the petitioner is that he had been appearing personally on each and every date, but his presence was not recorded by the Court. Such a plea cannot be accepted. Petitioner came to know about his *ex parte* proceedings on 11.12.2018 and thereafter, application for setting aside the *ex parte* proceedings was filed.

[4]. Evidently, the written statement was not filed within the extended period of 90 days and within 120 days despite the grant of sufficient opportunities. Evidence has been led by the plaintiff. Defendant No.2/petitioner and defendant No.7 have been permitted to join the proceedings of the suit from the stage onwards without any right to file written statement.

[5]. The Hon'ble Apex Court in **M/s SCG Private Limited Vs. K.S. Infrastructure and others, 2019(2) RCR (Civil) 249**

has held that non-filing of written statement within the period of 120 days is enough to forfeit the right of the defendant to file written statement. While deciding the aforesaid case, the Hon'ble Apex Court has taken note of ratio of **Kailash Vs. Nanhku and others, 2005(2) RCR (Civil) 379** and **Salem Advocate Bar Association Vs. Union of India, 2005(3) RCR (Civil) 530**. The provision in terms of Order 8 Rule 1 CPC has been couched in a mandatory overtone, but the same has been interpreted by the Hon'ble Apex Court as directory in nature. The rigour of provision in terms of its requirement cannot be extended to infinity. The Court cannot grant extension beyond 120 days from the date of service of summon upon the defendant.

[6]. Argument raised by learned counsel for the petitioner is that the ratio of **M/s SCG Private Limited's case (supra)** is applicable only to Commercial Court cases and the discretion in terms of Order 8 Rule 1 CPC can be exercised even after expiry of 120 days after appearance of the defendant in the Court.

[7]. I have heard the arguments raised by learned counsel for the petitioner.

[8]. Section 16 of the Commercial Courts Act provides for

amendment in the CPC. Section 16(2) of the Act is evident that the commercial division and commercial Court shall follow the provisions of CPC as amended by the aforesaid Act. If any provision of any rule or jurisdiction of the High Court or any amendment to the Code of Civil Procedure by the State Government is in conflict with the provisions of CPC, then provision of CPC as amended by the aforesaid Act shall prevail. Even otherwise, Order 8 Rule 1 CPC has also provided extended indulgence subject to payment of costs. The period of 90 days can be extended even upto 120 days with some provision of costs, but such an extension cannot be made for indefinite period and the discretion cannot be extended to infinity. This is not the intention of Order 8 Rule 1 CPC in any manner.

[9]. The conduct of the defendant in not filing the written statement even within the extended period of 120 days would definitely forfeit his right to file written statement in the present case.

[10]. For the reasons recorded hereinabove, these revision petitions are dismissed.

29.08.2019

Prince

Whether reasoned/speaking
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No