

114

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

CR No. 4405 of 2019

Date of Decision: 29.08.2019

Ram Avtar and others

-Petitioners

Vs

Mahabir Singh and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajesh Lamba, Advocate,
for the petitioners.

RAJ MOHAN SINGH, J. (ORAL)

Perusal of the impugned order would show that the petitioners appeared before the trial Court on 07.02.2019.

Till passing of impugned order, period of more than 120 days had expired and the written statement was not filed.

In case arising out of Commercial Court proceedings, Hon'ble Apex Court in **M/s SCG Private Limited vs KS Infrastructure and others, 2019 RCR (Civil) 249**, held that the Court cannot grant extension beyond 120 days from the date of appearance of the defendant before the trial Court and the same will result in forfeiture of right to file written statement.

The aforesaid judgment was rendered by the Hon'ble Apex Court after considering the 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.

Para 16 of the aforesaid judgment reads as under:-

16. *“Learned counsel for the respondents then strongly relied upon the inherent powers of the Court to state that, in any case, a procedural provision such as contained in the amendment, which may lead to unjust consequences can always, in the facts of a given case, be ignored where such unjust consequences follow, as in the facts of the present case. We are again of the view that this argument has also no legs to stand on, given the judgment of this Court in **Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal, [1962] Suppl 1 SCR 450**. In this judgment, the Court held: “The suit at Indore which had been instituted later, could be stayed in view of s.10 of the Code. The provisions of that section are clear, definite and mandatory. A Court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit in certain specified circumstances.*

When there is a special provision in the Code of Civil Procedure for dealing with the contingencies of two such suits being instituted, recourse to the inherent powers under s.151 is not justified...” (at page 470) Clearly, the clear, definite and mandatory provisions of Order V read with Order VIII Rule 1 and 10 cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what is stated therein.”

Section 16 of the Commercial Courts Act provides for amendment in the CPC. Section 16(2) of the Act is apparent that the commercial division and commercial court shall follow the provisions of CPC as amended by the aforesaid Act and where any provision of any rule and 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, on facts the conduct of the petitioners in not filing the written statement within 120 days is enough to forfeit the right of filing written statement as held in ***M/s SCG Contracts India Pvt. Ltd.*** (supra).

In view of aforesaid, I do not see any error of jurisdiction in the order passed by the trial Court.

This revision petition is accordingly, dismissed.

29.08.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No