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

**Civil Revision No.4400 of 2019
Date of Decision: 17.07.2019**

Surmukh Singh and others

.....Petitioners

Vs

Kulbir Singh and others

....Respondents

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

Present: Mr. Akshay Jindal, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 01.09.2018 passed by the Civil Judge (Jr. Divn.), Malerkotla vide which defence of the petitioner was struck off for non-filing of the written statement within the prescribed period.

[2]. Perusal of the record would show that the defendants/petitioners appeared before the trial Court on 04.04.2018. Thereafter till 01.09.2018, written statement was not filed even after expiry of 120 days. The trial Court by observing that the written statement was not filed despite expiry of 90 days, proceeded to strike off the defence of the

defendants vide the impugned order.

[3]. Order 8 Rule 1 CPC though couched in a mandatory overtone, thereby fixing time of 30 days for filing written statement from the date of service of summons, but the same was held to be directory in view of ratio as laid down by the Hon'ble Apex Court in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, 2005(3) R.C.R. (Civil) 530.**

Even if the provision is held to be directory, it does not mean that the time for filing written statement can be stretched to infinity. If the defendants fails to file the written statement within the time specified under Order 8 Rule 1 CPC, they can be allowed to file the written statement within the extended period as may be specified by the Courts for the reasons to be recorded in writing, but not later than 90 days from the date of service of summon. Even the period of 90 days can be extended further upto 120 days on showing sufficient cause by the defendants subject to satisfaction of the Court and for the reasons to be recorded including some provision of costs.

[4]. 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)** of commercial court case 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 subject to payment of costs and 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).

[5]. Learned counsel for the petitioners submitted that the period fixed by the Hon'ble Apex Court in **M/s SCG Contracts India Pvt. Ltd.**'s case (supra) is only applicable in case of commercial dispute and the same cannot be applied in ordinary suits.

[6]. 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. 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.

[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 nature, 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 the satisfaction of the court and also subject to payment of costs. The discretion has to be exercised in judicious manner and not to make the provision i.e. Order 8 Rule 1 CPC as nugatory.

[8]. In the instant case after appearance in the Court on 04.04.2018, the defendants did not file written statement upto 01.09.2018 i.e. even within the period of 5 months. No explanation has come forth on record, justifying their inaction with reference to any fact or event. The conduct of the petitioners in not filing written statement within 120 days is enough to forfeit their right to file written statement.

[9]. For the reasons recorded hereinabove, I see no justification to interfere in this revision petition. This revision petition is found to be devoid of merits and is accordingly dismissed.

July 17, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No