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

**Civil Revision No.6136 of 2019 (O&M)
Date of Decision: 26.09.2019**

**Bhupinder Kaur @ Manjinder Kaur & others
.....Petitioners**

Vs

M/s Shakti Traders ...Respondent

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

Present: Mr. Vivek K. Thakur, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged the order dated 03.09.2019 passed by the Civil Judge (Junior Division) Nakodar vide which the defence of the petitioners/defendants was struck off on account of non-filing of written statement.

[2]. Perusal of the record would show that the defendants were served and put in appearance before the Court through their counsel on 01.02.2019 and thereafter did not file written statement even within the extended period of 90 days and grace period of 120 days. Petitioners had appeared on six occasions. The impugned order was passed on 03.09.2019 and by that time there was total period of about 210 days during which the written statement was not filed.

[3]. The application under Order 8 Rule 1 CPC was filed by

the plaintiff for striking off the defence of the petitioners on account of non filing of written statement. After presentation of the said application on the very next date, the defendants moved an application for permission to file written statement. The trial Court observed that when defendants can move an application for permission to file written statement after moving application under Order 8 Rule 1 CPC for striking off the defence of the defendants, then there was no hurdle for the respondents/defendants to file written statement within the stipulated period of 90 days.

[4]. Even on 18.07.2019, there was delay of 5½ months. The application under Order 8 Rule 1 CPC was filed on 09.07.2019. The defendants did not file any written statement after their appearance on 01.02.2019. They availed six effective opportunities for filing written statement on 21.02.2019, 07.03.2019, 26.03.2019, 12.04.2019, 25.04.2019 and 24.05.2019. Even thereafter the defendants filed an application under Order 7 Rule 14 CPC on 24.05.2019 for presentation of documents on which plaintiff relied in the plaint. Even on the date of filing the aforesaid application under Order 7 Rule 14 CPC, the period of 115 days had expired. The conduct of the petitioners/defendants is not such which would result in any sympathetic consideration in favour of the defendants/

petitioners.

[5]. The provision in terms of Order 8 Rule 1 CPC is couched in a mandatory overtone, but even if the provision is considered to be directory, the period of 90 days is an extended period subject to payment of adequate costs.

[6]. 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.

[7]. 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.

[8]. The conduct of the defendants 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.

[9]. For the reasons recorded hereinabove, I find that there is no justification to interfere with the impugned order. This revision petition is accordingly dismissed.

September 26, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No