

111

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

CR No. 6577 of 2019

Date of Decision: 18.10.2019

Rajan Singla

-Petitioner

Vs

Maya Ram and others

-Respondents

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

Present: Mr. Sunil Agnihotri, Advocate,  
for the petitioner.

\*\*\*\*

**RAJ MOHAN SINGH, J. (ORAL)**

Petitioner has laid challenge to the order dated 04.09.2019 passed by Civil Judge (Junior Division), Shahabad, District Kurukshetra whereby defence of the petitioner was struck off for want of written statement.

Perusal of the record would show that the petitioner had appeared on 01.04.2019 before the trial Court and the case was adjourned to 08.05.2019 for filing written statement. Since, the Presiding Officer was not holding Court on 08.05.2019, therefore, the case was taken up on 06.05.2019 and was adjourned to 11.07.2019. On 11.07.2019 again, the case was adjourned to 07.08.2019.

Written statement on behalf of defendant No.2 was filed on 07.08.2019 but the petitioner-defendants No.1 and 3 did

not file the written statement. The case was adjourned to 04.09.2019 and last opportunity was granted to defendants No.1 and 3 with a clear understanding that in case the written statement is not filed by the adjourned date, their defence shall be struck off.

On 04.09.2019 also, written statement was not filed and the impugned order was passed.

From 01.04.2019 till 04.09.2019, more than 120 days had elapsed, but the petitioner did not file the written statement.

Evidently, the written statement was not filed within a period of 90 days and also within 120 days despite granting sufficient opportunities.

In **M/s SCG Private Limited vs K.S. Infrastructure and others, 2019(2) RCR (Civil) 249**, the Hon'ble Apex Court 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 the written statement. While deciding the aforesaid case, the Hon'ble Apex Court has taken note of ratio of **Kailash vs Nanhku and ors, 2005(2) RCR(Civil) 379** and **Salem Advocate Bar Association vs Union of India, 2005(3) RCR(Civil) 530.**

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 rigor of provision in terms of its requirement cannot be extended to infinity. The Court cannot grant extension beyond 120 days from the date of appearance of the defendant in the Court.

Though the ratio of **M/s SCG Private Limited's case (supra)** is applicable only in Commercial Court cases and the discretion in terms of Order 8 Rule 1 CPC can be exercised only during currency of period of 120 days.

Section 16 of the Commercial Courts Act provides for amendment in the Code of Civil Procedure. 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.

Conduct of the defendant-petitioner in not filing the written statement even within the extended period of 120 days would definitely forfeit his right to file the written statement in the present case.

This revision petition is accordingly, dismissed.

18.10.2019  
*Jyoti Yadav*

**(RAJ MOHAN SINGH)**  
**JUDGE**

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