

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 733 of 2020

Date of Decision: 03.02.2020

The Adarsh Colony (First) Co-operative House Building Society Ltd.

.....Petitioner

Vs.

Bachu Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Pankaj Jain, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the impugned order passed by the learned trial court dismissing the application of the petitioner seeking that the defence of the counter-claimants (in the counter-claim filed by the petitioner), be struck off.

At the outset itself, Mr. Jain, learned counsel for the petitioner, very fairly has produced in court a judgment of the Supreme Court in **Desh Raj** vs. **Balkishan (deceased) through Proposed LR Ms. Rohini** (Civil Appeal No. 433 of 2020), decided on 20.01.2020, and has submitted that in terms of the said judgment the petitioner cannot have a grievance with regard to a written statement having been filed beyond the period of 90 days stipulated in the Code of Civil Procedure, in a case which is not commercial in nature; yet, he submits that the respondents herein having filed a reply to the counter-claim more than one year and three months after they were served of notice in the counter-claim, the said period is far too long (beyond 90 days) for it to have been condoned by the trial

court.

He draws attention to paragraph 16 of the aforesaid judgment which reads as follows:-

“16. However, it would be gainsaid that although the unamended Order VIII Rule 1 o CPC is directory, it cannot be interpreted to bestow a free hand to on any litigant or lawyer to file written statement at their own sweet-will and/or to prolong the lis. The legislative objective behind prescription of timelines under the CPC must be given due weightage so that the disputes are resolved in a time-bound manner. Inherent discretion of Courts, like the ability to condone delays under Order VIII Rule 1 is a fairly defined concept and its contours have been shaped through judicial decisions over the ages Illustratively, extreme hardship or delays occurring due to factors beyond control of parties despite proactive diligence, may be just and equitable instances for condonation of delay.”

Having considered the matter, in view of the fact that it is very fairly admitted that the ratio of the judgment aforesaid is to the effect that the statutory period of 90 days as stipulated in Order VIII Rule 1 of the CPC can only be applicable to “commercial suits”, but yet it cannot be ignored that the delay in filing the written statement does seem to be very long in the present case, this petition is disposed of with a direction that the written statement to the counter-claim filed by the petitioner, would be looked into only upon payment of costs to the petitioner of Rs. 20,000/-, by the defendants who filed such statement after such a long time, failing which the written statement will not be taken into consideration at all by the trial court.

However, it is also further clarified that since this petition has been disposed of as above, without even issuing notice to the respondents, if they are aggrieved of this order in any manner, they would be at liberty to file an application seeking a review thereof, on valid grounds.

February 03, 2020
nitin

Whether speaking/reasoned
Whether Reportable

(AMOL RATTAN SINGH)
JUDGE
Yes
No.