

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

-.-

CR-2539-2019 (O&M)

Date of Decision : 30.11.2022

Satender & Others

....Petitioners

VERSUS

Manbir

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sushil Sheoran, Advocate, for the petitioners.

Ms. Anu Garg, Advocate for
Mr. V.P.Sangwan, Advocate for the respondent.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 07.12.2021 whereby the defence of the defendant-petitioners has been struck off due to non-filing of the written statement.

Learned counsel for the defendant-petitioners would contend that the defendant-petitioners had put in appearance on 31.05.2021. Thereafter, the case could not be taken up due to the administrative orders passed by this Court. On 07.07.2021, yet again, the written statement was not filed and the case was adjourned to 16.09.2021. On 16.09.2021, since written statement was yet again not filed, Rs.100/- was imposed as costs to be deposited with the District Legal Services Authority, Charkhi Dadri and last opportunity was granted to file the written statement. However, despite the last opportunity, the reply was not filed. Learned counsel for the

defendant-petitioners would further contend that if one opportunity is granted to the defendant-petitioners, the written statement would be filed.

Per contra, learned counsel for the plaintiff-respondent has vehemently contended that despite numerous opportunities and despite costs being imposed, neither the written statement was filed nor were the costs paid. Learned counsel would further contend that the impugned order was rightly passed striking off the defence of defendant-petitioners.

Heard.

In the present case undoubtedly the defendant-petitioners have been remiss in filing the written statement. There is no reason forthcoming for not filing the written statement on the earlier dates and for not depositing the costs as imposed vide order dated 16.09.2021. However, the learned counsel for the defendant-petitioners states that the case was adjourned to 04.05.2022 and the defendant-petitioners were ready with their written statements but prior to 04.05.2022 the case was taken up on 02.05.2022 by the Court concerned and since the Judicial officer was availing casual leave on 04.05.2022 the case was adjourned to 14.09.2022. It is further the contention that the defendant-petitioners were not aware of the adjourned date i.e. 14.09.2022 since the said order was passed in the absence of counsel for the parties.

Hon'ble Supreme Court in the case of **Desh Raj vs. Balkishan (D)** through proposed LR Ms. Rohini [(2020) RCR (Civil) 807] has held as under :

“ANALYSIS & CONCLUSION

11. At the outset, it must be noted that the Commercial

Courts Act, 2015 through Section 16 has amended the CPC in its application to commercial disputes to provide as follows:

“16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes - (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a specified value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908, by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.”

12. Hence, it is clear that post coming into force of the aforesaid Act, there are two regimes of civil procedure.

Whereas commercial disputes [as defined under Section 2(c) of the Commercial Courts Act, 2015] are governed by the CPC as amended by Section 16 of the said Act; all other noncommercial disputes fall within the ambit of the unamended (or original) provisions of CPC.

13. The judgment of Oku Tech (supra) relied upon the learned Single Judge is no doubt good law, as recently upheld by this Court in SCG Contracts India Pvt. Ltd. v. KS Chamankar Infrastructure Pvt. Ltd., AIR 2019 SC 2691, but its ratio concerning the mandatory nature of the timeline prescribed for filing of written statement and the lack of discretion with Courts to condone any delay is applicable only to commercial disputes, as the judgment was undoubtedly rendered in the context of a commercial dispute qua the amended Order VIII Rule 1 CPC.

14. As regard the timeline for filing of written statement in a non-commercial dispute, the observations of this Court in a catena of decisions, most recently in Atcom Technologies Ltd. v. Y.A. Chunawala and Co., (2018) 6 SCC 639 holds the field. Unamended Order VIII Rule I, CPC continues to be directory and does not do away with the inherent discretion of Courts to condone certain delays.”

Thereafter in the case of **Bharat Kalra Vs. Raj Kishan Chabra [2022 SCC OnLine SC 613]** also it has been held that the provision of Order 8 Rule 1 of CPC is not mandatory relying upon the judgment of the Supreme Court in **Kailash V. Nankhu & Ors. [(2005) 4 SCC 480]**.

No doubt the defendant-petitioners have been remiss in filing the written statement, however, in view of the law laid down by the Supreme Court and in view of the fact that the written statement was ready to be filed on 04.05.2022 but since the case was taken up on 02.05.2022 and adjourned to 14.09.2022 in the absence of the counsel for the parties, the counsel was not aware of the adjourned date and in order to impart complete justice between the parties, one final opportunity is granted to the defendant-petitioners to file their written statement within a period of two weeks from today, subject to payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent.

The revision petition stands disposed off accordingly. Pending applications, if any, also stand disposed off.

It is made clear that any observation made herein shall not been treated as an expression of an opinion on the merits of the case.

November 29, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO