

CR-6088-2019 (O&M)

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

CR-6088-2019 (O&M)

Date of decision : 05.02.2020

Kavita Malhotra

... Petitioner

Versus

Kunal Dev Malhotra @ Kunal Malhotra

... Respondent

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Vishal Munjal, Advocate
for the petitioner.

None for the respondent.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed against the order dated 19.08.2019 (Annexure P-2), whereby defence of the petitioner was struck off due to non-filing of the written statement and non-payment of costs.

Notice was issued to the respondent, however, no one has appeared on behalf of the respondent despite service.

Learned counsel for the petitioner contends that he may be granted one last opportunity to file the written statement.

It has been held by the Hon'ble Supreme Court in **Civil Appeal No.433 of 2020** titled as **“Desh Raj V/s Balkishan (D) through proposed LR Ms. Rohni”** decided on 20.01.2020, 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 non-commercial 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

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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 time-line 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.”

In view of the above and to impart complete justice, one more opportunity is granted to the petitioner to file her written statement on the next date of hearing, which is stated to be 15.02.2020.

The revision petition is disposed off, accordingly.

05.02.2020
Yogesh Sharma

(ALKA SARIN)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No