

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

CR-835-2020 (O&M)

Date of decision : 30.11.2022

Jagseer Singh & Ors.

... Petitioner(s)

Versus

Surinder Singh & Anr.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sherry K. Singla, Advocate for the petitioners.

Mr. Arun Bansal, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 24.10.2019 whereby the application filed by plaintiff-respondent No.1 for striking off the defence of the defendant-petitioners due to non-filing of the written statement has been allowed and the application filed by the defendant-petitioners for enlarging the time for filing the written statement has been dismissed.

Learned counsel for the defendant-petitioners would contend that there has been a definite lapse on their part, however, they are willing to compensate the plaintiff-respondent No.1 by way of costs. Learned counsel for the defendant-petitioners very candidly admits that there is no explanation for not having filed the written statement for a period of six

months and thereafter having moved an application for supply of documents.

Per contra, learned counsel for the plaintiff-respondent No.1 has contended that there is an inordinate delay in filing the written statement and after a lapse of six months an application for production of documents was filed. Learned counsel has further contended that the impugned order was rightly passed striking off the defence of defendant-petitioners.

Heard.

The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for specific performance of agreement to sell dated 05.05.2017 as also sought a declaration to the effect that the sale deed No.1498 dated 03.08.2017 regarding land measuring 12 kanals was false, forged and fabricated; and further, in the alternative, for recovery of Rs.1,31,14,484/- i.e. Rs.5,00,000.00 paid as earnest money on the date of execution of agreement to sell dated 05.05.2017 + Rs.54,14,066.00 paid on 18.05.2017 as advance part payment of sale consideration + Rs.59,14,066.00 being the penalty amount + interest amount of Rs.12,86,352.00 thereon @ 18% per annum; as also seeking permanent injunction restraining the defendant-petitioners from further alienating the suit property. Despite being given numerous opportunities, the defendant-petitioners did not file the written statement. After a lapse of almost six months, an application was filed for production of documents, which was allowed on 26.09.2019. Meanwhile, plaintiff-respondent No.1 filed an application for striking off the defence on the ground that the written statement had not been filed. The defendant-petitioners filed an application for enlarging the time for filing the written statement. Vide common order dated 24.10.2019 the application

filed by plaintiff-respondent No.1 for striking off the defence was allowed and the application filed under Section 148 read with Section 151 CPC for enlargement of time for filing the written statement was dismissed.

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 order to impart complete justice between the parties, this Court deems it fit to grant one final opportunity to the defendant-petitioners to file their written statement within a period of two weeks from today, subject to payment of Rs.50,000/- as costs to be paid to plaintiff-respondent No.1 since there has been an extra-ordinary delay in filing the written statement.

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 opinion on the merits of the case.

30.11.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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