

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

CR-262-2020 (O&M)

Date of decision : 24.03.2022

Bimla Devi @ Vimla Devi

... Petitioner(s)

Versus

Nanda Devi and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikas Bali, Advocate for the petitioner.

Mr. S.P. Garg, Advocate for respondent No.1.

Mr. Anil Sharma, Advocate for respondent No.2.

ALKA SARIN, J. (ORAL)

Heard in physical mode.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 02.07.2019 (Annexure P-2) whereby the defence of the defendant-petitioner has been struck off.

Learned counsel for the defendant-petitioner would contend that the suit had been filed by the plaintiff-respondent for declaration to the effect that Sh. Suresh Chand son of Late Sh. Kewal Krishan resident of House No.2177, Sector 21-C, Chandigarh is civilly dead as he has not been seen or heard since 10.05.2011 and the plaintiff and defendant No.2 are the only legal heirs/natural successors of Sh. Suresh Chand and plaintiff and defendant No.2 become the owners of the estate of the deceased-Suresh Chand. The defendant-petitioner herein is the mother of deceased Suresh

Chand and, as per the averments in the plaint, she would also be getting her share as per law. Learned counsel for the defendant-petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of ***Desh Raj vs. Balkishan (D) Through Proposed LR Ms. Rohini***, Civil Appeal No.433 of 2020 decided on 20.01.2020 wherein it has been held that the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 are mandatory only in the cases of Commercial Courts under Commercial Courts Act, 2015 and not in non-commercial matters.

Mr. S.P. Garg, Advocate and Mr. Anil Sharma, Advocate have put in appearance on behalf of respondent Nos.1 and 2, respectively.

The Hon'ble Supreme Court, in the case of ***Desh Raj (supra)***, 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.”

In view of the law laid down by the Hon’ble Supreme Court and keeping in view the fact that the present petitioner is the mother of Suresh Chand and is 92 years’ old, I deem it appropriate to grant one opportunity to the defendant-petitioner to file the written statement on the next date of hearing fixed before the Court below subject to the payment of ₹1,000/- as costs to be paid to respondent No.1.

Keeping in view the age of the defendant-petitioner, the Trial Court is requested to expedite the hearing of the suit.

Disposed off. Pending application(s), if any, also stand disposed off.

24.03.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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