

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

CR-1792-2022 (O&M)
Date of decision : 15.07.2022

Suresh Kumar

... Petitioner(s)

Versus

Vinod Garg

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Suresh Kumar Kaushik, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

This is a civil revision petition under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 (CPC) for setting aside the impugned order dated 22.05.2019 (Annexure P-3) passed by the Rent Controller, Kaithal striking off the defence of the tenant-petitioner as well as the order dated 16.11.2021 (Annexure P-6) dismissing the application for recalling the order dated 22.05.2019.

Learned counsel for the tenant-petitioner would contend that the tenant-petitioner had put in appearance on 13.02.2019 and due to his ill-health the written statement could not be filed and the defence was struck off vide order dated 22.05.2019. Learned counsel for the tenant-petitioner would further contend that the written statement is ready and in case one opportunity is granted to the tenant-petitioner, he would file his written statement within a period of one week from today.

Notice of motion.

Mr. Saurabh Garg, Advocate, who is present in Court, accepts

notice on behalf of the landlord-respondent and has filed his memorandum

of appearance.

Learned counsel for the landlord-respondent has pointed out that the tenant-petitioner did not file his written statement within the period of 90 days and after two months filed an application for recalling the order dated 22.05.2019 which was decided on 16.11.2021 and now the present revision petition has been filed on 03.05.2022. It is further the contention that meanwhile provisional rent has been assessed and the case is fixed for today i.e. 15.07.2022 for deposit of provisional rent.

Heard.

In the present case, delay in filing the written statement is stated to be on account of the reason that the tenant-petitioner was unwell. Learned counsel for the tenant-petitioner has made a categorical statement that in case one last opportunity is granted, the tenant-petitioner would file his written statement within a period of one week from today.

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]**.

In view of the law laid down and in order to impart complete

justice between the parties, one more opportunity is granted to the tenant-petitioner to file his written statement within a period of one week from today, subject to payment of Rs.15,000/- as costs to be paid to the landlord-respondent.

It is made clear that the present order shall not be treated as a reason to condone the delay, if any, in making the payment of the provisional rent as already stands assessed by the Rent Controller. In case the provisional rent as assessed is not deposited as directed by the Rent Controller the Rent Controller shall proceed in accordance with law.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

15.07.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

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