

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

CR-2696-2022 (O&M)

Date of Decision : 21.12.2022

Balbir Singh and Others

....Petitioners

VERSUS

Surinder Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rahul Arora, Advocate, for
Mr. Nitish Garg, Advocate for the petitioners.

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

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ALKA SARIN, J.

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 13.08.2020 whereby the defence of the petitioners has been struck off for not filing the written statement.

Learned counsel for the petitioners would contend that the petitioners had put in appearance on 10.07.2020 for the first time and on 13.08.2020 their defence was struck off. Learned counsel would contend that firstly during the said period various restrictions were in place due to the Pandemic Covid-19 and further proviso of Order 8 Rule 1 of the Code of Civil Procedure, 1908 provides a period of 90 days for filing of the written statement which has also further been held to be directory in nature and not mandatory.

Learned counsel for the respondent No.1 contends that written statement was not filed and hence the order has correctly been passed.

Heard.

The impugned order in the present case has been passed within a period of 33 days of the defendants having put in appearance.

Order 8 Rule 1 of the Code of Civil Procedure reads as under :

1. Written statement : The defendant shall within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

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]**. The Supreme Court further held that proviso of Order 8 Rule 1 in the case of non-commercial is directory in nature and not mandatory. In

the present case even the period of 90 days has not lapsed.

In view of the above, the impugned order dated 13.08.2020 cannot be sustained and the same is accordingly set aside. The defendant-petitioners are permitted to file their written statement on the next date of hearing fixed before the Trial Court.

The revision petition is accordingly allowed. Pending application, if any, also stand disposed off.

December 21, 2022
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(ALKA SARIN)
JUDGE

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