

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

-.-

CR-4260-2019 (O&M)

Date of Decision : 29.11.2022

Surinder Singh & Others

....Petitioners

VERSUS

Subhan Ali and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate for the petitioners.

Mr. Himanshu Bansal, Advocate for
Mr. Dharmender Singh, Advocate for the respondent.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India for challenging the order dated 19.04.2019 whereby the defence of the defendant-petitioners has been struck off for non-filing of the written statement despite the numerous opportunities having been given and despite costs being imposed, which were not deposited by the defendant-petitioners.

The brief facts relevant to the present lis are that the suit was filed by the plaintiff-respondent for declaration and damages with a prayer of mandatory injunction. The suit was filed on 12.02.2018. The defendant-petitioners appeared for the first time on 16.05.2018. On 16.05.2018 the matter was adjourned to 20.07.2018 for filing of the written statement. However, the written statement was not filed and the case was adjourned to 10.09.2018 for filing of the written statement. On 10.09.2018 also the written statement was not filed and another opportunity was granted subject to payment of Rs.500/- as costs to be deposited with the District Legal

Services Authority, Kurukshetra and the case was adjourned to 12.10.2018. On 12.10.2018 neither the cost was deposited nor the written statement was filed and the case was adjourned to 22.11.2018 for the same purpose. The position remained the same on 22.11.2018 and the case was adjourned to 10.01.2019. On 10.01.2019 also the written statement was not filed and the case was adjourned to 19.04.2019. On 19.04.2019 the written statement was not filed and an application was filed on behalf of learned counsel for the defendant-petitioners on the ground that he was suffering from viral infection and was unable to attend Court. Vide the impugned order dated 19.04.2019 the defence of the defendant-petitioners was struck-off. Aggrieved by the said order, the present revision petition has been filed.

Learned counsel for the defendant-petitioners would contend that the counsel was unwell on 19.04.2019 and hence could not attend the Court. It is further the contention that the medical record of the counsel was appended with the application, however, the same was not considered by the Court.

Per contra, learned counsel for the plaintiff-respondent has contended that despite numerous opportunities being given and despite costs being imposed, neither the written statement was filed nor were the costs paid. Learned counsel would further contend that the defendant-petitioners purposely did not file the written statement and the impugned order was rightly passed striking off their defence.

Heard.

In the present case undoubtedly there is a delay in filing the written statement. In the application filed by the counsel for the defendant-petitioners on 19.04.2019 there is no reason forthcoming for not filing the

written statement on the earlier dates. Even today, the learned counsel for the defendant-petitioners is unable to give an explanation for non-filing of the written statement on the earlier dates as well as the non payment of costs as imposed vide order dated 10.09.2018.

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, one final opportunity is granted to the defendant-petitioners to file their written statement within a period of two weeks from today, subject to payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent.

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 an opinion on the merits of the case.

November 29, 2022
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(ALKA SARIN)
JUDGE

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