

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

**CR-3113-2022 (O&M)  
Date of decision : 14.12.2022**

Monisha Meena

... Petitioner(s)

Versus

Aditya Mina

... Respondent(s)

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. P.S. Dhaliwal, Advocate for the petitioner.

Ms. Meenakshi Dogra, Advocate for the respondent.

**ALKA SARIN, J. (ORAL)**

Learned counsel for the petitioner states that in the present case there is no chance of mediation and hence the matter may be heard on merits.

The present revision petition under Article 227 of the Constitution of India has been filed impugning the order dated 23.05.2022 (Annexure P-3) whereby the defence of the petitioner-wife has been struck off for non-filing of the written statement.

Learned counsel for the petitioner states that the petition under Section 13 of the Hindu Marriage Act, 1955 was filed on 16.08.2021 and the petitioner herein had put in appearance on 21.11.2021. Thereafter, the case was adjourned to 16.03.2022, however, the written statement could not be filed and the case was adjourned to 23.05.2022. It is further the contention

that on 23.05.2022 counsel for the petitioner had the written statement ready, however, the same was not taken on the record on the ground that the same was not filed on time.

Per contra, learned counsel for the respondent has contended that despite numerous opportunities the written statement was not filed and hence the defence was rightly struck off.

Heard.

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]**.

Keeping in view the law as laid down by Hon’ble Supreme Court as well as the fact that the present is a matrimonial matter and in order to impart complete justice between the parties, I deem it appropriate to grant one opportunity to the petitioner to file her written statement on or before the next date of hearing in the Court below, subject to payment of Rs.30,000/- as costs to be paid to the 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 be treated as an expression of an opinion on the merits of the case.

( ALKA SARIN )  
JUDGE

14.12.2022  
Yogesh Sharma

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