

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

CR-3205-2022 (O&M)

Date of Decision : 21.09.2022

Amandeep Singh & Others

....Petitioners

VERSUS

Kamalveer Singh & Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ketan Chopra, Advocate for the petitioners.

Mr. Pritpal Singh Miglani, Advocate for respondent Nos.1 & 2.

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ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India impugning the order dated 29.04.2022 whereby the defense of the petitioners has been struck off.

Learned counsel for the petitioners would contend that counsel appearing in the Court below did not inform the petitioners and hence the written statement could not be filed.

Per contra, learned counsel for the respondent has contended that 11 opportunities were availed by the petitioners from 25.11.2019 till 21.10.2021 before the impugned order was passed on 29.04.2022 striking off the defense of the defendant-petitioners.

Heard.

In the present case, the opportunities to file the written statement have been granted primarily during the COVID period. Further the 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.”

In view of the judgment passed by the Hon’ble Supreme Court as well as the fact that most of the adjournments were during the period of the Covid-19 Pandemic and in order to impart complete justice, the present revision petition is allowed and one more opportunity is granted to the petitioners to file their written statement within a week from the passing of this order subject to the payment of Rs.30,000/- as costs to be paid to the respondents. It is made clear that in case the written statement is not filed within a week from today, the present revision petition shall be deemed to have been dismissed. Pending applications, if any, also stand disposed off.

September 21, 2022
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(ALKA SARIN)
JUDGE

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