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

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CR-1432-2023 (O&M)

Date of Decision : 15.03.2023

Radha Krishan

....Petitioner

VERSUS

Shibba Chabbra

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vansh Chawla, Advocate for the petitioner.

Mr. Aayush Gupta, Advocate for the respondent.

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ALKA SARIN, J. (Oral)

The present revision petition has been preferred challenging the order dated 24.11.2022 passed by the Rent Controller whereby the defence of the tenant-petitioner has been struck off for not filing his written statement despite numerous opportunities.

Learned counsel for the tenant-petitioner would contend that the tenant-petitioner had put in appearance on 23.02.2022. It is further the contention that the matter was pending before the Mediation and Conciliation Centre, when an application was filed by the landlord-respondent for striking off the defence. Learned counsel has further contended that given one opportunity, he would file the written statement

on the next date of hearing fixed before the Trial Court i.e 18.04.2023 and he is willing to compensate the landlord-respondent by ways of costs.

Per contra, learned counsel for the landlord-respondent has contended that delaying tactics are being adopted by the tenant-petitioner time and again and in fact there was also a delay in approaching this Court while filing the present revision petition.

Heard.

The provisions of Order VIII Rule 1 CPC have been held to be directory in nature and not mandatory. 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 fact that the provisions are directory in nature and the tenant-petitioner has been running a shop in the premises in dispute since 2010, he deserves one opportunity to file his written statement and to contest the case. The present revision petition is allowed and the impugned order dated 24.11.2022 is set aside. The tenant-petitioner is granted one opportunity to file his written statement on the next date of hearing fixed before the Rent Controller i.e 18.04.2023 subject to payment of Rs.30,000/- as costs to be paid to the landlord-respondent. It is made

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clear that payment of costs shall be a condition precedent for filing the written statement.

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

March 15, 2023

(ALKA SARIN)

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JUDGE

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