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

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CR-1820-2020 (O&M)
Date of Decision : 14.03.2023

Rajinder Singh

....Petitioner

VERSUS

M/s DLF Utilities Ltd.

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gourav Janglan, Advocate for the petitioner.

Mr. Kunal Dawar, Advocate for the respondent.

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ALKA SARIN, J. (Oral)

The present revision petition has been preferred against the impugned order dated 03.02.2020 passed by the Trial Court whereby the defence of the defendant-petitioner was struck off for the reason that the defendant-petitioner failed to file the written statement even after the expiry of 90 days.

Learned counsel for the defendant-petitioner would contend that since the defendant-petitioner was not keeping well, therefore, he could not come to sign the written statement. It is further the contention that given one opportunity, he would file the written statement and he is willing to compensate the plaintiff-respondent by ways of costs.

Per contra, learned counsel for the plaintiff-respondent states that despite the numerous opportunities the written statement was not filed and hence the impugned order was correctly passed.

Heard.

The defence of the defendant-petitioner in the present case has been struck-off on the ground that despite the period of 90 days having elapsed, the written statement was not filed.

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 view of above and in view of the settled law that the provision of Order VIII Rule 1 CPC, in the case of non-commercial suits, is only directory in nature and not mandatory, I deem it appropriate to set aside the impugned order dated 03.02.2020. The defendant-petitioner is permitted to file his written statement on the next date of hearing fixed before the Trial Court subject to payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent.

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

March 14, 2023
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(ALKA SARIN)
JUDGE

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