

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

CR-1863-2022 (O&M)

Date of decision : 13.01.2023

Suresh and Ors.

... Petitioner(s)

Versus

Subhash and Ors.

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. M.S. Rana, Advocate for the petitioners.

Mr. B.K. Bagri, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

Challenge in the present revision petition under Article 227 of the Constitution of India is to the order dated 05.04.2022 (Annexure P-7) striking off the defence of defendant Nos.1 to 5/petitioners.

Learned counsel for the defendant Nos.1 to 5/petitioners would contend that though after the defence of defendant Nos.1 to 5/petitioners was struck off, the other defendants were permitted to file their written statement on a subsequent date i.e. 28.04.2022. Learned counsel for the defendant Nos.1 to 5/petitioners relies upon the judgments of the Hon'ble Supreme Court in the cases of **Kailash Vs. Nanhku & Ors. [(2005) 4 SCC 480]** and **Bharat Kalra Vs. Raj Kishan Chabra [2022 SCC OnLine SC 613]** to contend that the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 (CPC) are not mandatory in non-commercial suits.

Per contra, learned counsel for the plaintiff-respondent No.1 has vehemently contended that no reply was filed despite numerous opportunities and hence the defence has rightly been struck off.

Heard.

Hon'ble Supreme Court in the case of **Desh Raj vs. Balkishan (D)** through proposed LR Ms. Rohini [2020 (1) 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** (*supra*) 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 the case of **Kailash** (*supra*).

The Supreme Court further held that proviso of Order 8 Rule 1 CPC in the

case of non-commercial is directory in nature and not mandatory.

In view of the above as well as keeping in view the fact that some of the other defendants were permitted to file their written statements subsequent to the date of striking off the defence of defendant Nos.1 to 5/petitioners, this Court deems it appropriate to allow the present revision petition. Accordingly, the impugned order dated 05.04.2022 (Annexure P-7) is set aside. The defendant Nos.1 to 5/petitioners are permitted to file their written statement on the next date of hearing fixed before the Trial Court i.e. 07.02.2023, subject to payment of Rs.30,000/- to be paid to the plaintiff-respondent No.1.

Disposed off accordingly. Pending application, if any, also stand disposed off.

13.01.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

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