

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1852-2022 (O&M)
Date of decision : 20.03.2023

Pawan Kumar ... Petitioner(s)

Versus

Parmita Devi ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Naveen Siwach, Advocate for the petitioner.

Mr. Kamaldeep Redhu, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

CM-5005-CII-2023

Learned counsel for the parties are *ad idem* that instead of hearing the application for stay, the main case may be heard today itself.

With the consent of learned counsel for the parties, the main case is taken on Board today itself.

CM stands disposed off.

CR-1852-2022

The present revision petition has been filed under Article 227 of the Constitution of India for challenging the impugned order dated 11.08.2021 (Annexure P-5) whereby the defence of the defendant-petitioner has been struck off. Vide order dated 14.07.2022, notice of motion was

issued and it was specifically recorded in the order that no evidence had been recorded till 14.07.2022.

Learned counsel for the defendant-petitioner would contend that the written statement could not be filed due to the situation created because of Pandemic Covid-19. He would further contend that the defendant-petitioner had put in appearance in September 2020 and thereafter all the dates were during the period of the Pandemic. He would further contend that given one opportunity, the defendant-petitioner would file his written statement and that he is willing to compensate the plaintiff-respondent by way of costs.

Learned counsel for the plaintiff-respondent would contend that in the interregnum the plaintiff-respondent has led her evidence and the case is now fixed for arguments.

Heard.

In the present case when the defendant-petitioner had approached this Court, the evidence was yet to be started. The defence of the defendant-petitioner was struck off primarily on the ground that despite the period of 90 days having elapsed, the written statement had not been filed.

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 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 Vs. Nankhu & Ors.** [(2005) 4 SCC 480]. The Supreme Court further held that proviso of Order 8 Rule 1 CPC in the case of non-commercial disputes is directory in nature and not mandatory.

Though learned counsel for the plaintiff-respondent has pointed out that the evidence of the plaintiff-respondent in the present case has since been led and the case is fixed for arguments, however, the defendant-petitioner had approached this Court immediately on the passing of the impugned order and this Court had issued notice of motion vide order dated 14.07.2022 and at that point of time no evidence had been recorded.

In view of above and in view of the settled law that the provision of Order 8 Rule 1 CPC in the case of non-commercial suit is only directory in nature and not mandatory, this Court deems it appropriate to set aside the impugned order dated 11.08.2021 (Annexure P-5). The defendant-petitioner is permitted to file his written statement within a week from today before the Trial Court subject to payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent. It is made clear that the payment of costs to the plaintiff-respondent shall be a condition precedent.

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

20.03.2023
Yogesh Sharma

(**ALKA SARIN**)
JUDGE

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