

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

**CIVIL REVISION No.2354 of 2023 (O&M)
DATE OF DECISION : 19.05.2023**

Eldeco Jalandhar Properties Pvt. Ltd. and OthersPetitioners

versus

Eldeco Greens Residents Welfare Society (Regd.)Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gagandeep Singh Virk, Advocate for the petitioners

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ALKA SARIN, J. (Oral):

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 20.09.2022 (Annexure P-1) whereby the defence of the defendant-petitioners has been struck off.
2. Notice of motion.
3. Mr. Vipin Kumar Sharma, Advocate accepts notice on behalf of the plaintiff-respondent.
4. Learned counsel for the petitioners would contend that the written statement is now ready and would be filed on the next date of hearing and that no prejudice would be caused to the plaintiff-respondent

and further that the defendant-petitioners are also willing to compensate the plaintiff-respondent by way of costs.

5. *Per contra*, learned counsel for the plaintiff-respondent has contended that despite availing several opportunities the written statement was not filed and hence the defence has rightly been struck off.

6. Heard.

7. 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.”

8. Thereafter in the case of **Bharat Kalra Vs. Raj Kishan Chabra [2022 SCC OnLine SC 613]** the Apex Court has held as under :

“3. Admittedly, the suit for injunction filed by the plaintiff is not the one which is governed by the Commercial Court Act, 2015. Therefore, the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory in view of the judgment of this Court reported as 'Kailash v. Nankhu & Ors.' reported in (2005) 4 SCC 480.

4. In view of the aforesaid judgment, we find that the delay in filing of the written statement could very well be compensated with costs but denying the benefit of

filing of the written statement is unreasonable.

5. Consequently, we allow the present appeal. The order passed by the High Court is set aside. The written statement already filed is taken on record.”

9. No doubt there has been a lapse on the part of the defendant-petitioners in not filing the written statement. However, in view of the settled law that the provisions of Order VIII Rule 1 CPC in the case of non commercial suits is only directory in nature and not mandatory, this Court deems it appropriate, in order to do justice to the parties, to set aside the impugned order dated 20.09.2022 (Annexure P-1) to the extent where the defence of the defendant-petitioners has been struck off. The defendant-petitioners are permitted to file their written statement within a period of one week from today before the Trial Court subject to payment of Rs.40,000/- 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.

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

19.05.2023
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(ALKA SARIN)
JUDGE

<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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