

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

312

CR No.2215 of 2022

Date of Decision : 01.02.2023

Asha Rani

....Petitioner

VERSUS

Anil Kumar

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Ramandeep Kaur, Advocate for the petitioner.

Mr. Rajesh Goyal, Advocate for the respondent.

ALKA SARIN, J. (Oral)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 07.04.2022 whereby the defence of the defendant-petitioner has been struck off due to non-filing of the written statement.

Learned counsel for the defendant-petitioner would contend that given one opportunity, the written statement would be filed on the next date of hearing fixed before the Trial Court. Learned counsel for the defendant-petitioner would further contend that there was no fault on the part of the defendant-petitioner and that now the defendant-petitioner has also changed the counsel.

Per contra learned counsel for the plaintiff-respondent has vehemently contended that despite several opportunities the written statement was not filed and, hence, no fault can be found with the impugned order dated 07.04.2022.

Heard.

In the present case the defendant-petitioner, despite availing several opportunities, failed to file the written statement and accordingly

vide the impugned order dated 07.04.2022 her defence was struck off. Hon'ble Supreme Court in 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.'

No doubt the defendant-petitioner has been remiss in not filing the written statement, however, since the present is a non-commercial suit and the provisions of Order VIII Rule 1 CPC have been held to be directory in nature and in order to do complete justice between the parties, the present revision petition is allowed. The defendant-petitioner is permitted one opportunity to file her written statement on the next date of hearing fixed before the Trial Court subject to the payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent. Pending applications, if any, also stand disposed off.

01.02.2023
jk

(ALKA SARIN)
JUDGE

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