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

CR-4445-2019 (O&M)

Reserved on : 23.01.2023

Date of Decision : 31.01.2023

Mander Singh

....Petitioner

VERSUS

Punjab State Warehousing Corporation and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Dr. Rau P.S. Girwar, Advocate for the petitioner.

Mr. Bhupinder Singh, Advocate for the respondents.

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ALKA SARIN, J.

The challenge in the present revision petition under Article 227 of the Constitution of India is to the order dated 15.05.2019 passed by the Trial Court vide which the application filed by the plaintiff-petitioner for striking off the defence of the defendant-respondents has been dismissed.

The brief facts relevant to the present case are that the suit was filed by the plaintiff-petitioner in the year 2018. Thereafter, despite the matter being adjourned, written statement was not filed and eventually on 11.03.2019 the written statement was filed by the defendant-respondents. On the same day an application was filed by the plaintiff-petitioner for striking off the defence of the defendant-respondents and returning the

written statement filed by them on the ground that the written statement had not been filed despite the expiry of 90 days from the date of issue of notice.

Learned counsel for the plaintiff-petitioner would contend that earlier the defendant-respondents were proceeded against ex-parte and the said order was set aside vide order dated 04.12.2018, subject to payment of Rs.200/- as costs. It is further the contention of the counsel that the provisions of Order VIII Rule 1 CPC are mandatory in nature. In support of his argument, he has relied upon **M/s SCG Contracts India Pvt. Ltd. Vs. K.S.Chamankar Infrastructure Pvt. Ltd. & Ors. [2019 (2) RCR (Civil) 249]**.

Per Contra, learned counsel for the defendant-respondent has contended that the provisions of Order VIII Rule 1 CPC have been held directory in nature in the case of non-commercial suits. In support thereof, he relies upon **Shoraj Singh Vs. Charan Singh [2021 (4) PLR 158]**.

Heard.

In the present case vide the impugned order it has been noticed that the written statement was already filed by the defendant-respondents on 11.03.2019 and on the same day the application was filed by the plaintiff-petitioner for striking off the defence and returning the written statement on the ground that the written statement had not been filed within a period of 30 days. The argument of learned counsel for the plaintiff-petitioner that the provisions of Order VIII Rule 1 CPC have been held to be mandatory in nature in the case of **M/s SCG Contracts India Pvt. Ltd.** (supra) is wholly misplaced inasmuch as in the case of **Desh Raj Vs. Balkishan (D) through proposed LR Ms. Rohini [(2020) RCR (Civil) 807]** it was 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.”

The judgment in the case of **M/s SCG Contracts India Pvt. Ltd.** (supra) was specifically noticed and it was held that the same was in the

context of commercial disputes. Thereafter, in the case of **Bharat Kalra Vs. Raj Kishan Chabra [2022 SCC OnLine SC 613]** also it has been held that the provisions of Order VIII Rule 1 CPC are not mandatory in nature relying upon the judgment of the Supreme Court in **Kailash Vs. Nankhu & Ors. [(2005) 4 SCC 480]**. The same proposition has also been laid down in the case of **Shoraj Singh** (supra).

In view of the law laid down, I do not find any illegality or infirmity in the impugned order dated 15.05.2019 passed by the Trial Court. The present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

31.01.2023
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(ALKA SARIN)
JUDGE

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