

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

CR-6530-2023

Date of Decision: 08.12.2023

M/s Salasar Infra and another

...Petitioners

Versus

M/s Satnam Packagings

...Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Ms. Rose Gupta, Advocate and
Ms. Garima Modi, Advocate
for the petitioner.

GURBIR SINGH, J. (ORAL)

1. The challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 01.09.2023 (Annexure P-6) passed by the learned Additional Civil Judge (Sr. Division), Hisar whereby defence of the petitioner/defendant has been struck off.

2. The brief facts as culled out from the petition are that the respondent/plaintiff filed a suit for recovery along with interest. In pursuant to the notice, petitioner appeared on 21.11.2022 and sought time to file written statement and the case was adjourned to 13.03.2023 and on 13.03.2023 an application under Order 8 Rule 1 of CPC for forfeiting the rights of the petitioner/defendant for filing written statement was filed by the respondent/plaintiff and case was adjourned for filing reply. The reply along with written statement was filed and case was adjourned time and again and thereafter adjourned to 05.05.2023. The right to file written statement was not closed prior to the filing of the written statement but

learned trial Court on 01.09.2023 passed the impugned order (Annexure P-6) by forfeiting the rights of the petitioner for the reasons that written statement has not been filed.

3. Learned counsel for the petitioner has argued that on 21.12.2022 the suit was adjourned to 13.03.2023 and once the Court has already adjourned the case for filing written statement then there was no occasion for the Court to struck off the defence of the petitioner by allowing the application dated 13.03.2023 (Annexure P-2). He further submits that he would be satisfied if written statement already filed is taken on record.

4. I have heard the submissions of the learned counsel for the petitioner.

5. The Commercial Courts Act, 2015 (hereinafter to be referred as 'the Act') is a special legislation to speedy dispose off the commercial disputes. The petitioner/defendants appeared in the Court on 21.11.2022 and the order dated 21.11.2022 is reproduced as under:-

“Vakalatnama on behalf of defendants no.1 & 2 has been filed. Service complete. Adjournment sought. Heard and allowed. Now to come upon 13.03.2023 for filing written statement by the defendants.”

6. On 13.03.2023, written statement was not filed but an application (Annexure P-2) was moved for forfeiting the right of the defendant and case was adjourned to 13.04.2023 for filing reply and consideration. On the same date, file was taken up again and reply to the application for forfeiting the right of the defendant has been filed along with the written statement and case was adjourned to 13.04.2023 for consideration. The said application was disposed of on 01.09.2023

(Annexure P-6). The operative part of the said order is reproduced as under:-

“The present suit has been filed under the provisions of the Commercial Courts Act. As per the provisions of Civil Procedure Code which have been amended in the background of Commercial Courts Act it is mandatory to file the written statement by 120th day from the date of service of summons, and upon the expiry of 120 days from the date of service of summons the right of defendant for filing written statement stands forfeited. In the present case, it is apparent that 120 days have expired since the service of summon on the defendant, the defendant cannot take the plea that the court has fixed the case for a longer period than 120 days and it was in fact the duty of the defendant to come present before the court within a period of 120 days to submit the written statement. No court shall make an order extending the time provided under the provisions for filing of written statement, therefore, application in hand is allowed. Defence of the defendant is hereby struck off. Now, to come up on 11.10.2023 for evidence of the plaintiff at own responsibility.”

7. As per amendment in the Order 8 Rule 1 of CPC, for the purpose of Commercial Courts Act, 2015, the written statement is to be filed within a period of 30 days but the Court can grant time for the reasons to be recorded and written statement to be filed within 120 days from the receipt of the service of the summons. The learned Court without giving any reason adjourned the case from 21.11.2022 to 13.03.2023 for filing written statement. The Court has not even given the impression that this case is being tried under the Commercial Courts Act, 2015. Moreover, written statement was filed on 13.03.2023 itself. In case, **Zolba Vs. Keshao, AIR**

2008 SC 2099 it has been held by the Hon'ble Apex Court that provisions

under Order 8 Rule 1 CPC are not mandatory in nature. The duties casts upon the parties is to file the written statement within 120 days. In case, **R.N. Jadi and Brothers Vs. Subash Chandra, AIR 2007 SC 2571** it has been held by the Hon'ble Supreme Court that provision of Order 8 Rule 1 CPC casts obligation upon the defendant particular period but that does not deal with the power of the Court and also do not specifically take away the power of the Court to take the written statement on record. Though written statement filed beyond the time as provided. The written statement are already taken on record on 13.03.2023 and any technicality cannot be hurdle for doing complete justice to the parties. In such circumstances impugned order deserves to be set aside.

8. If notice of the petition is given to the respondent then it may further prolong the matter and may also cause financial burden upon the plaintiff/respondent. Thus order dated 01.09.2023 (Annexure P-6) passed by the learned Additional Civil Judge (Sr. Division), Hisar is hereby set aside and written statement already taken on record be read on behalf of the defendants but subject to payment of costs of Rs.10,000/- to be paid to the opposite party.

9. If the respondent is not satisfied with this order, he can move an application for recalling of this order within 30 days.

10. Accordingly, the present revision petition stands disposed of.

08.12.2023

Parveen kumar

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned :Yes/No
Whether reportable :Yes/No