

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

CR No.1077 of 2023

Date of Decision: 28.02.2023

Himachal Pradesh State and others

.....Petitioner

vs.

M/s Ganesh Kartikey Construction Pvt Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Harminder Singh, Advocate for the petitioner.

VIKAS SURI, J.

This is a civil revision petition under Article 227 of the Constitution of India praying for setting aside the order dated 07.10.2022 (Annexure P-2) whereby defence of defendant-petitioner Nos.1 to 5 was struck off.

Learned counsel for the petitioner would submit that the respondent had filed a suit for declaration challenging rejection of his technical bid regarding work namely "Bridge over Swan Khad on Kotla Amroh road along with road SH C/o 2 Nos. bridges" and relief of mandatory injunction directing the petitioners to pay the mesne profits at the rate of 20% against estimate cost of work. On receipt of notice of the said suit, the petitioners put in appearance on 31.07.2019 and the matter was adjourned to 30.08.2019. On the said date, the Additional Public Prosecutor (APP) for the State filed memorandum of appearance on behalf of the defendant-petitioners and sought time to file written statement and reply to the stay application. The case was then posted for 16.09.2019. On the said

date, an application under Order 7 Rule 11 CPC seeking rejection of the

plaint was filed by the petitioners through the state counsel. Notice of the said application was taken and the case was adjourned to 04.10.2019 for reply and consideration on the same. The said application was finally disposed of vide order dated 31.05.2022.

It is pleaded that from 04.10.2019 till 31.05.2022, i.e. the date on which the application under Order 7 Rule 11 CPC was declined, the case remained pending due to various reasons, namely filing of reply to the said application, consideration on the same, restricted functioning due to Covid-19 pandemic etc. Vide order dated 31.05.2022, after the application seeking rejection of the plaint was dismissed by a separate detailed order, the case was adjourned to 01.08.2022 for filing written statement and reply to the stay application by the defendant-petitioners. On the next date, the case was adjourned to 08.09.2022. Thereafter, another last opportunity was given for the same purpose and the matter was adjourned to 07.10.2022, on which date the impugned order Annexure P-2 was passed, whereby defence of the defendant-petitioner No.5 was struck off.

Learned counsel for the petitioners would contend that the petitioners being the State Government and its functionaries are defending litigation in a different State and are dependent on the written communications received from the office of the Additional District Attorney at Amritsar. The petitioners had taken necessary steps and had also prepared the written statement but the same could not be filed on 08.09.2022, on account of some corrections to be carried out in the same on the advise of Sh. Rupinder Singh, ADA. It is also submitted that the petitioners are a

public department and was engaged by the Election Commission of India on election duty in the State of Himachal Pradesh. They were on election duty till 12.11.2022, by which date they were informed that defence has been struck off vide order dated 17.10.2022. Counsel would also refer to the communications dated 27.08.2022 (Annexure P-5), 02.09.2005 (Annexure P-4), 04.10.2022 (Annexure P-6), 18.10.2022 (Annexure P-7), 09.11.2022 (Annexure P-8) and 10.11.2022 (Annexure P-9) to demonstrate that the petitioner were actively pursuing the matter. Learned counsel for the petitioners would further contend that the written statement is ready and in case one opportunity is granted to them, he would file the written statement on the very first opportunity granted by the Court.

I have heard the learned counsel for the petitioners and with his able assistance perused the paper-book.

In view of the order proposed to be passed, notice is not being issued to the respondent as it would delay the proceedings and entail additional expense to the respondent.

In the present case, it is pointed out that after the application seeking rejection of the plaint was dismissed vide order dated 31.05.2022, the defendant-petitioners got only two effective opportunities to file the written statement, within which the written statement could not be filed for the reasons noticed above. Learned counsel for the petitioners has made a categorical statement that in case one last opportunity is granted, subject to being put terms to compensate the plaintiff-respondent, the written statement would be filed on the very first opportunity, as may be granted by

this Court. The three-Judge Bench of the Hon'ble Apex Court in the case of ***Desh Raj vs. Balkishan (Dead) through Proposed Legal Representative Ms. Rohini, (2020) 2 SCC 708***, has held as under:

"Analysis and conclusion

10. 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."

11. 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 CPC as amended by Section 16 of the said Act: all other non-

commercial disputes fall within the ambit of the unamended (or original) provisions of CPC.

12. The judgment of Oku Tech relied upon by the learned Single Judge is no doubt good law, as recently upheld by this Court in *SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd.* 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 8 Rule 1 CPC.

13. As regards 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 & Co.* holds the field. The unamended Order 8 Rule 1 CPC continues to be directory and does not do away with the inherent discretion of courts to condone certain delays.”

It has also been held in the case of ***Bharat Kalra vs. Raj Krishan Chhabra, 2022 SCC OnLine SC 613***, while relying upon the earlier judgment in ***Kailash vs. Nanko and others, 2005 (4) SCC 480***, that the provision of Order 8 Rule 1 CPC is not mandatory and the delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing the written statement is unreasonable.

In view the law settled by the Apex Court and in order to do complete justice between the parties, I am of the considered opinion that the ends of justice would be met if the delay in filing written statement is condoned subject to payment of costs, as the period of 90 days provided

also well settled that the rules of procedure are the handmaids of justice and procedural law is always subservient to and is in aid of justice. Moreover, no prejudice would be caused to the respondent in case the suit is decided on merits, after affording a proper opportunity to contest the same.

In view of the above discussion, one more opportunity is granted to the defendant-petitioners to file the written statement within a period of 10 days from today subject to payment of Rs.10,000/- as costs, to be paid to the plaintiff-respondent. It is made clear that failing to file the written statement or pay costs in terms of this order, the petitioner would not be entitled to any further opportunity for the said purpose.

The revision petition is allowed in the aforesaid terms and the impugned order dated 07.10.2022 is set aside.

(VIKAS SURI)
JUDGE

February 28, 2023
Rajeev (rvs)

Whether speaking/reasoned	Yes
Whether reportable	No