

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**131****CR No.413 of 2024****Date of Decision : 26.02.2024**

Municipal Corporation Gurugram

....Petitioner

VERSUS

Joginder

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arvind Seth, Advocate for the petitioner.

Dr. Anand Bishnoi, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present revision petition has been preferred under Article 227 of the Constitution of India challenging the order dated 30.11.2023 vide which the defence of the defendant-petitioner was struck off due to non-filing of the written statement.

2. Learned counsel for the defendant-petitioner would contend that though there has been a delay in filing the written statement, however, given one opportunity the defendant-petitioner would file its written statement. It is further the contention that the defendant-petitioner is willing to compensate the plaintiff-respondent by way of costs.

3. *Per contra* learned counsel for the plaintiff-respondent has contended that for almost six months the written statement was not filed and infact the application for interim relief was dismissed only on the ground that the written statement has not been filed.

4. I have heard learned counsel for the parties.
5. Hon'ble Supreme Court in the 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.”

6. Though the defendant-petitioner has been remiss in filing the written statement, however in the interest of justice, this Court deems it appropriate to give one opportunity to the defendant-petitioner to file its written statement subject to payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent. The costs shall be recovered from the person who is responsible for not filing the written statement. It is made clear that the payment of costs shall be a condition precedent for filing the written statement. The written statement be filed on or before the next date of hearing before the Trial Court.

7. The revision petition is disposed off in the above terms. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

26.02.2024
jk

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