



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

116

CR No.641 of 2024

Date of Decision : 15.05.2024

Kewal Krishan Sharma and Another

....Petitioners

VERSUS

Surjit Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vijay Rana, Advocate for the petitioners.

Mr. Naresh Kumar Manchanda, Advocate for respondent No.1.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 12.12.2023 whereby the application filed by the plaintiff-respondent No.1 for striking off the defense of the defendant-petitioners has been allowed.

2. Learned counsel for the defendant-petitioners would contend that due to old age of defendant-petitioner No.1 and certain medical issues, the written statement could not be filed. On 01.09.2023 the application was filed for striking off the defense of the defendant-petitioners. The reply to the said application was filed by the defendant-petitioners on 27.09.2023. However, vide the impugned order dated 12.12.2023 the defense of defendant-petitioners was struck off.

3. *Per contra* learned counsel for the plaintiff-respondent No.1 has stated that despite 11 opportunities the reply was not filed. It is further the contention that after a lapse of 120 days the defendant-petitioners forfeited



their right to file the written statement. In support of his argument he has relied upon a judgment of the Hon'ble Supreme Court in the case of **M/s SCG Contracts India Pvt. Ltd. vs. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors. [2019(2) RCR (Civil) 249]**.

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. In the case of **Desh Raj** (supra) the Hon’ble Supreme Court had also considered the judgment in the case of **M/s SCG Contracts India Pvt. Ltd.** (supra). Thus, in view of the fact that provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 have been held to be directory in nature and not mandatory, the impugned order cannot be sustained. The same is accordingly set aside. The written statement already filed by the defendant-petitioners before the Trial Court be taken on the record.

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

(ALKA SARIN)
JUDGE

15.05.2024

jk

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