

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**124****CR No.711 of 2024****Date of Decision : 15.04.2024**

Sukhvir Singh

....Petitioner

VERSUS

Gulzar Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Hasrat Brar, Advocate for the petitioner.

Mr. G.S. Jagpal, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. Challenge in the present revision petition is to the impugned order dated 08.11.2023 whereby the defense of the defendant-petitioner has been struck off due to non-filing of the written statement despite a period of 90 days having been elapsed.

2. Learned counsel for the petitioner would contend that given one opportunity the defendant-petitioner would file his written statement and that he is willing to compensate the plaintiff-respondent by way of costs. In support of his argument he has relied upon the judgment of the Hon'ble Supreme Court in the case of **Desh Raj vs. Balkishan (D) through proposed LR Ms. Rohini [(2020) RCR (Civil) 807]** to contend that the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 have been held to be directory in nature and not mandatory in the case of non-commercial suits.

3. *Per contra* learned counsel for the plaintiff-respondent has contended that the defendant-petitioner is only trying to delay the matter by not filing the written statement despite opportunities having been given to the petitioner to file the written statement.

4. Heard.

5. In the case of **Desh Raj** (*supra*), Hon'ble Supreme Court 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. Learned counsel for the defendant-petitioner has stated that given one opportunity the defendant-petitioner would file his written statement on or before the next date of hearing i.e. 29.05.2024.

7. In view of the fact that provisions of Order VIII Rule 1 CPC have been held to be directory in nature and not mandatory in the case of non-commercial suits, this Court deems it appropriate to give one opportunity to the defendant-petitioner to file his written statement subject to payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent. 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.

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

(ALKA SARIN)
JUDGE

15.04.2024
jk

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