

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1177-2024 (O&M)
Date of decision : 22.04.2024

Raminder Sharma ... Petitioner(s)

Versus

Tanu Anand ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. B.D. Sharma, Advocate for the petitioner.
Mr. Sudhir Paruthi, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed against the impugned order dated 24.01.2024 whereby the defense of the defendant-petitioner has been struck off due to non-filing of the written statement within a period of 90 days.
2. Learned counsel for the defendant-petitioner 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 in the case of non-commercial suits. It is further the contention of the learned counsel that an application had been filed for production of certain documents and on the

same day the application for striking off the defense was also filed. The learned counsel would further contend that the defendant-petitioner may be granted one opportunity to file his written statement and that he is also willing to compensate the plaintiff-respondent by payment of costs.

3. *Per contra* the learned counsel for the plaintiff-respondent would contend that despite the period of 90 days having elapsed, the written statement was not filed by the defendant-petitioner and hence his defense has rightly been struck off.

4. I have heard the learned counsel for the parties.

5. In the present case the defendant-petitioner had put in appearance on 08.08.2023 and thereafter had filed an application for production of documents under Order 7 Rule 14 CPC on 03.10.2023. The said documents were produced on 18.11.2023 and on the same date an application was filed for striking off the defense. Instead of filing his written statement, the defendant-petitioner chose to contest the said application by filing his reply. Infact, on 08.12.2023 the case was adjourned to 24.01.2024 only for filing of a reply to the application. There is no reason forthcoming for not filing the reply despite the documents having been produced. The defense of the defendant-petitioner was struck off for not having filed the written statement within the statutory period of 90 days.

6. The Hon'ble Supreme Court in the case of **Desh Raj** (supra) 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 time-line 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 it has been held that the period of 90 days is not mandatory and is only directory in nature in the case of non-commercial suits, however, the defendant-petitioner did delay the filing of the written statement for which no explanation is forthcoming. Though the documents were produced on 18.11.2013, instead of filing his written statement, the defendant-petitioner chose to contest the said application and eventually his

defense was struck off on 24.01.2024. Even on that date no effort was made by the defendant-petitioner to file his written statement. However, keeping in view the fact that the provisions of Order VIII Rule 1 CPC have been held to be directory in nature in the case of non-commercial suits and in order to impart complete justice, one opportunity is granted 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, which shall be a condition precedent.

7. Disposed off accordingly. Pending applications, if any, also stand disposed off.

22.04.2024

Yogesh Sharma

(ALKA SARIN)

JUDGE

NOTE: Whether speaking/non-speaking: Speaking

Whether reportable: YES/NO