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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1490-2020 (O&M)
Date of decision : 02.02.2024

Sarabjit Singh & Anr. ... Petitioner(s)

Versus

Joginder Singh ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. H.P.S. Ghuman, Advocate for the petitioners.
Mr. Sunny K. Singla, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed against the impugned order dated 22.11.2019 (Annexure P-1) whereby the defense of the defendant-petitioners has been struck off due to non-filing of the written statement.
2. Learned counsel for the defendant-petitioners 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. The learned counsel would further contend that the defendant-petitioners may be granted one opportunity to file the written

statement and that the defendant-petitioners are willing to compensate the plaintiff-respondent by payment of costs.

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

4. Heard.

5. In the present case the defense of the defendant-petitioners has been struck off due to non-filing of the written statement despite 90 days having elapsed. 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. In view of the above and 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-petitioners to file their written statement on the next date of hearing i.e. **26.02.2024** before the Court below, subject to payment of Rs.10,000/- 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.

02.02.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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