

2024:PHHC:034473

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

124

**CR-1405-2024 (O&M)
Date of Decision : 11.03.2024**

SATBIR SINGH

.... Petitioner

VERSUS

HARCHARAN SINGH & ANR.

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Pradeep Sharma, Advocate for the petitioner.

Mr., Amit Arora, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

1. Mr. Amit Arora, Advocate has appeared and has filed his memo of appearance on behalf of respondent No.1. The same is taken on record.
2. Challenge in the present revision petition is to the order dated 18.01.2024 (Annexure P-1) passed by the learned Additional Civil Judge (Senior Division), Tarn Taran whereby the defence of defendant No.1-petitioner was struck off for non-filing of the written statement.
3. Learned counsel for defendant No.1-petitioner has contended that defendant No.1-petitioner would file the written statement on the next date of hearing i.e. 12.03.2024 and that defendant No.1-petitioner is willing to compensate the respondents by way of costs.
4. *Per contra*, learned counsel for the plaintiff-respondent No.1, who is the only contesting respondent, would contend that despite a period of 90 days having elapsed, written statement was not filed and hence the defence was rightly struck off.

5. Heard.

6. The 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 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.”

7. Since the provisions of Order 8 Rule 1 CPC have been held to be directory in nature and not mandatory, this Court deems it fit to grant one opportunity to defendant No.1-petitioner to file his written statement within a period of 10 days from today subject to payment of Rs.30,000/- as costs to be paid to plaintiff-respondent No.1. The payment of costs shall be a condition precedent for filing written statement.

8. Petition stands disposed off in the above terms. Pending applications, if any, also stand disposed off.

11.03.2024

Aman Jain

(ALKA SARIN)

JUDGE

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