

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

128

CR-1662-2024 (O&M)
Date of decision: 15.04.2024

Kavita

... Petitioner(s)

Versus

Pardeep Kumar and Another

...Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Deep Singh Saini, Advocate for the petitioner.

Ms. Amrita Nagpal, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

1. Challenge in the present revision petition is to the impugned order dated 13.12.2023 whereby the defense of the defendant No.2-petitioner has been struck off due to non-filing of the written statement.

2. In the present case the plaintiff-respondent No.1 herein filed a suit for possession by way of specific performance of conditional mortgage dated 08.10.2008 directing the defendant No.1 i.e. Brij Bhushan to execute and get registered the sale deed of his ½ share in part of House No.124/14, measuring 86 Sq. yards i.e. 57'-6" x 13'-5" situated at Old Subzi Mandi, Sanoli Road, Panipat vide registered sale deed dated 28.12.1988. The suit came up for hearing for the first time on 09.08.2023 and was adjourned to 04.09.2023 for affixing proper court fee. On 04.09.2023 notice was issued to the defendants for 18.09.2023. Vide order dated 18.09.2023 defendant No.1 was proceeded against *ex parte* and the matter was adjourned to 23.10.2023 for filing of the written statement by defendant No.2 i.e. petitioner herein.

On 23.10.2023 written statement was not filed and last opportunity was granted and the matter was adjourned to 29.11.2023. Vide order dated 29.11.2023, on an application filed by defendant No.1 for setting aside the *ex parte* order, the *ex parte* order dated 18.09.2023 was set aside and defendant No.1 was permitted to file his written statement. Since no written statement was filed by the defendant No.2-petitioner the matter was adjourned to 13.12.2023 for filing of the written statement by defendant No.2- petitioner subject to last opportunity on payment of Rs.300/- as costs. Vide the impugned order dated 13.12.2023 the defense of the defendant No.2-petitioner was struck off for non-filing of the written statement.

3. Learned counsel for the defendant No.2-petitioner would contend that given one opportunity the defendant No.2-petitioner would file her written statement. He would further contend that even as per the provisions of Order 8 Rule 1 CPC, 90 days are granted for filing of the written statement and in the present case even that period of 90 days had not expired when the defense of the petitioner was struck off. Learned counsel for the defendant No.2-petitioner would further contend that given one opportunity the defendant No.2-petitioner would file her written statement on or before the next date of hearing i.e 26.04.2024.

4. Ms. Amrita Nagpal, Advocate has put in appearance on behalf of plaintiff-respondent No.1, who is the contesting respondent, and has contended that issues in the present case stand framed and that despite numerous opportunities the defendant No.2-petitioner had failed to file her written statement. It is further the contention that the witnesses of the

plaintiff-respondent No.1 have tendered their evidence in examination-in-chief.

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

6. In the present case, even before the expiry of 90 days, the defense of the defendant No.2-petitioner was struck off. In the case of **Desh Raj vs. Balkishan (D) through proposed LR Ms. Rohini [(2020) RCR (Civil) 807]**, 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.”

7. Order 8 Rule 1 CPC reads as under :

“1. Written statement - The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant falls to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

8. The defendant is required to file the written statement within 30 days of the service of summons, however, the time may be extended upto 90 days from the date of service of summons. In the present case, the period of 90 days had not expired when the impugned order was passed.

9. In view of the judgment of the Supreme Court wherein it has been held that the provisions under Order 8 Rule 1 CPC are directory in nature and not mandatory in the case of a non-commercial suit, the impugned order cannot be sustained and the same is accordingly set aside. The defendant No.2-petitioner shall file her written statement on or before the next date of hearing before the Trial Court i.e. 26.04.2024. It is made clear that in case the written statement is not filed on 26.04.2024, the present petition shall be deemed to having been dismissed.

10. The present petition stands allowed accordingly. Pending miscellaneous applications, if any, also stand disposed off.

15.04.2024
Ankur

(ALKA SARIN)
JUDGE

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