



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

118

CR-2034-2024 (O&M)

Date of Decision : 17.05.2024

GURDEEP SINGH AND ANR

.... Petitioners

VERSUS

BALWINDER SINGH AND ORS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Maneesh Bali, Advocate for the petitioners.

Mr. Chanakya Batta, Advocate for respondents No.1 and 2.

ALKA SARIN, J. (ORAL)

1. Mr. Chanakya Batta, Advocate has put in appearance and has filed his vakalatnama on behalf of respondents No.1 and 2 who are the only contesting respondents. The same is taken on record.

2. Challenge in the present revision petition is to the order dated 18.01.2024 (Annexure P-3) passed by the learned Civil Judge (Junior Division), Phillaur vide which the defence of the defendant-petitioners was struck off for non-filing of the written statement.

3. Learned counsel for the defendant-petitioners would contend that given one opportunity the defendant-petitioners would file their written statement and that the defendant-petitioners are also willing to compensate the plaintiff-respondents No.1 and 2, who are the only contesting respondents, by way of costs. It is further the contention that the written statement could not be filed due to some miscommunication between the defendants as some of the defendants were yet to be served.



4. *Per contra*, learned counsel for plaintiff-respondents No.1 and 2 would contend that sufficient opportunities were granted to the defendant-petitioners, however, they failed to file their written statement despite a period of 10 months having elapsed and hence their 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. It is trite that the provisions of Order VIII Rule 1 CPC have been held to be directory in nature and not mandatory in the case of non-commercial suit. In view thereof, one opportunity is granted to the defendant-petitioners to file their written statement on or before the date fixed before the Trial Court i.e. **28.05.2024** subject to payment of



Rs.30,000/- as costs to be paid to the plaintiff-respondents No.1 and 2. The payment of costs shall be a condition precedent for filing of the written statement. It is made clear that in case the written statement is not filed on or before the next date of hearing i.e. 28.05.2024, the present revision petition shall be deemed to having been dismissed.

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

17.05.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No