



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

**128**

**CR-2789-2024 (O&M)  
Date of Decision : 04.07.2024**

M/S HARKESHAV AYURVEDA & ORS. ... Petitioners

**VERSUS**

KAMLESH RANI & ANR. .... Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Dhruv Mittal, Advocate for the petitioners.

Mr. Balbir Kumar Saini, Advocate for the respondents.

**ALKA SARIN, J. (ORAL)**

1. Mr. Balbir Kumar Saini, Advocate has appeared and has filed his vakalatnama on behalf of the respondents. The same is taken on record.
2. Challenge in the present revision petition is to the order dated 20.02.2024 (Annexure P-1) passed by the learned Additional Civil Judge (Senior Division), Panchkula vide which the defence of the defendant-petitioners was struck off for non-filing of the written statement.
3. The brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for permanent injunction for restraining the defendant-petitioners from raising construction over land comprised in Khewat No.30, Khatauni No.43, Khasra No.3//20 (7-18), 25//7/1 (3-14), 14/1 (3-2), 31//18(8-0), 19(6-16), 22(2-1), 150(1-2), 199(0-2) measuring 32 Kanals 15 Marlas situated in the revenue estate of Village Dhandardoo (Hadbast No.4), Sub-Tehsil Barwala, Tehsil and District Panchkula until the partition of the joint land is effected by metes and bounds. Notice was issued

in the suit on 26.12.2022. The defendant-petitioners for the first time appeared through their respective counsel on 31.01.2023. Thereafter the defendant-petitioners failed to file the written statement despite various opportunities and thus their defence was struck off vide the impugned order dated 20.02.2024.

4. 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 by way of costs.

5. *Per contra*, learned counsel for the plaintiff-respondents would contend that sufficient opportunities were granted to the defendant-petitioners, however, they failed to file their written statement despite a period of about 12 months having elapsed and hence their defence was rightly struck off. It is further the contention that no cogent ground is forthcoming for not filing the written statement.

6. Heard.

7. 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.”*

8. 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. 08.07.2024 subject to payment of Rs.30,000/- as costs to be paid to the plaintiff-respondents. 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. 08.07.2024, the present revision petition shall be deemed to having been dismissed.

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

**04.07.2024**  
*Aman Jain*

**(ALKA SARIN)**  
**JUDGE**

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