



125-2

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2949-2024 (O&M)
Date of decision : 27.05.2024

Vaneet Virmani ... Petitioner(s)
Versus
Rajinder Kumar Khanna (deceased thr. LRs) ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Mukesh Kumar Bhatnagar, Advocate for the petitioner.
Mr. Manjit Saini, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. Challenge in the present revision petition is to the impugned order dated 13.03.2024 whereby the defense of the petitioner has been struck off.
2. Learned counsel for the petitioner would contend that given one opportunity, the petitioner would file his written statement and that grave injustice would be caused in case he is not permitted to file his written statement as the petition is for ejectment under Section 13 of the East Punjab Urban Rent Restriction Act, 1949. Learned counsel for the petitioner would further contend that the petitioner is also willing to compensate the respondent by way of costs. The learned counsel 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.

3. Mr. Manjit Saini, Advocate has put in appearance on behalf of the respondent and filed his *vakalatnama*, which is taken on record. The learned counsel for the respondent would contend that despite being given numerous opportunities, the written statement was not filed and hence the defense has rightly been struck off.

4. Heard.

5. 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 the present case the petitioner no doubt has not filed his written statement despite having put in appearance on 14.11.2023. However, 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 do complete justice between the parties, the impugned order dated 13.03.2024 is set aside. The petitioner is granted one opportunity to file his written statement, subject to payment of Rs.30,000/- as costs to be paid to the respondent, which shall be a condition precedent.

7. Disposed off accordingly. Pending applications, if any, also stand disposed off.

27.05.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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