

2024:PHHC:078333



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

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CR-3409-2024 (O&M)

Date of Decision : 30.05.2024

M/s IZHAR TAILORS AND ANR

.... Petitioners

VERSUS

STATE BANK OF INDIA, LOCAL HEAD OFFICE

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Omkar Chauhan, Advocate for the petitioners.

Mr. Abhay Gupta, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. Mr. Abhay Gupta, Advocate has appeared and has filed his vakalatnama on behalf of the respondent which is taken on record and waives service.

2. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 29.04.2024 passed by the learned Additional Civil Judge (Senior Division), Panchkula whereby the defence of the defendant-petitioners was struck off for non-filing of the written statement.

3. The brief facts relevant to the present case are that the plaintiff-respondent filed a suit for recovery of amount of ₹13,37,627 along with interest. The defendant-petitioners herein put in appearance on 05.05.2023. The matter was adjourned to 28.08.2023 for filing of power of attorney and the written statement on behalf of the defendant-petitioners. Thereafter the matter was adjourned to different dates. Initially, Mr. Rakesh Nuniwal,

Advocate had put in appearance on behalf of the defendant-petitioners, however, his vakalatnama was never filed on the record. For the first time vakalatnama on behalf of the defendant-petitioners was filed by Ms. Rekha Malik, Advocate on 16.04.2024. The case was thereafter adjourned to 29.04.2024 on which date the defendant-petitioners defence was struck off on the ground that the mandatory period of 90 days had already expired since the appearance of the defendant-petitioners.

4. Learned counsel for the defendant-petitioners would contend that the counsel i.e. Mr. Rakesh Nuniwal, Advocate never filed his vakalatnama and did not file the written statement and hence for the fault of the counsel the defendant-petitioners should not be made to suffer. It is further the contention that on 16.04.2024 Ms. Rekha Malik, Advocate had filed her power of attorney and that the presence of Mr. Rakesh Nuniwal, Advocate has wrongly been marked in the order dated 29.04.2024. Learned counsel for the defendant-petitioners would further contend that given one opportunity the defendant-petitioners would file their written statement. Learned counsel for the defendant-petitioners has relied upon the judgment passed by 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 period of 90 days as mentioned in Order VIII Rule 1 CPC has been held to be directory in nature and not mandatory in the case of non-commercial suits.

5. *Per contra*, learned counsel for the plaintiff-respondent would contend that Mr. Rakesh Nuniwal, Advocate was the counsel who had

initially appeared and even on 29.04.2024 same counsel appeared and that sufficient opportunities were granted to the defendant-petitioners, however, they failed to file their written statement despite a period of 90 days having elapsed and hence their defence was rightly struck off. Learned counsel for the plaintiff-respondent is not in a position to deny the fact that the present suit falls under the category of non-commercial suit.

6. Heard.

7. In the present case the prayer made by the defendant-petitioners is that they may be permitted to file written statement as their defence has been struck off vide order dated 29.04.2024. 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.”

8. A perusal of the above reproduced paragraphs would clearly reveal that the period of 90 days as mentioned in Order VIII Rule 1 CPC has been held to be directory in nature and not mandatory in the case of non-commercial suits. The present is admittedly a non-commercial suit. Learned counsel for the defendant-petitioners has stated that the counsel who was earlier engaged did not even file his vakalatnama and it was only for the first time on 16.04.2024 that Ms. Rekha Malik, Advocate had put in appearance and had filed her vakalatnama. In view of the law laid down by the Hon'ble Supreme Court and in order to do complete justice between the parties, this

Court deems it appropriate to grant one opportunity to the defendant-petitioners to file their written statement on or before **10.07.2024** i.e. the date fixed before the Trial Court.

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

30.05.2024

Aman Jain

(ALKA SARIN)

JUDGE

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