IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

130 **CR-4304-2024 (O&M)**
Date of Decision : 20.08.2024

Baldev Singh and Others ....Petitioners

VERSUS

Major Singh ....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.S. Jammu, Advocate for the petitioners.

Mr. Robin Dutt, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 29.07.2019 whereby the defense of the petitioners was struck off on account of non-filing of the written statement as well as order dated 22.07.2024 whereby the application dated 18.09.2019 filed for re-calling the order dated 29.07.2019 has been dismissed.

2. Learned counsel for the petitioners would contend that the defense of the petitioners was struck off vide order dated 29.07.2019. Thereafter, an application for re-calling the said order remained pending for a period of five years and now vide the impugned order dated 22.07.2024 the same has been dismissed. Learned counsel for the petitioners would further contend that the counsel, who was earlier representing the petitioners, was unwell and eventually he passed away and hence the written statement could not be filed.

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3. Mr. Robin Dutt, Advocate has put in appearance on behalf of the respondent and has filed his power of attorney, which is taken on record. He would contend that even in 2019 cost of Rs.200/- was imposed, however, the same was not paid by the petitioners nor the written statement was filed and hence the defense of the petitioners was rightly struck off.

4. Heard.

5. In the present case the counsel earlier representing the petitioners remained unwell and eventually passed away. The defense was struck off on 29.07.2019. Shortly thereafter an application for re-calling the order dated 29.07.2019 was filed, which remained pending for a period of five years, and now vide the impugned order the said application has been dismissed. Learned counsel for the petitioners has contended that given one opportunity the petitioners would file their written statement. Reliance has also been placed on 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 provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 have been held to be directory in nature. Hon'ble Supreme Court in the said case 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:*

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"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

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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."

6. In the present case the reason given by the petitioners for non-filing of the written statement appears to be genuine. Keeping in view the

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law laid down by the Hon'ble Supreme Court in case of **Desh Raj** *(supra)* and the facts of the present case, this Court deems it appropriate to grant one opportunity to the petitioners to file their written statement, subject to payment of Rs.20,000/- as costs to be paid to the respondent. It is made clear that the payment of costs shall be a condition precedent for filing the written statement. The written statement be filed on or before the next date of hearing before the Trial Court.

7. The present revision petition is disposed off in the above terms. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

20.08.2024
jk

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

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