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

(339)

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Date of decision: - 27.08.2024

M/s Kan Denim and others

....Petitioners

Versus

M/s Partap Spintex Pvt. Ltd.

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sangram S. Saron, Advocate, and
Mr. M.B. Rajwade, Advocate
for the petitioners.

Mr. Vijay Kumar Jindal, Senior Advocate, with
Mr. Akshay Jindal, Advocate, and
Mr. Pankaj Gautam, Advocate
for the respondent.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 09.07.2024 (Annexure P-18) passed by the Additional District Judge, Ambala in C.S. (Commercial) No.01 of 2023 titled as M/s Partap Spintex Pvt. Ltd. Vs. M/s Kan Denim and others', whereby the application dated 20.05.2024 (Annexure P-10) filed by respondents under Order VIII Rule 1 of CPC read with Order VIII Rule 10 of CPC has been allowed and the written statement filed by the petitioners/defendants No.1 to 3 was held to

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be non-acceptable and has been rejected/discarded.

2. Brief undisputed facts of the present case are that the respondent had filed a suit dated 05.10.2023 for recovery of an amount of Rs.8,78,20,920.17/- on 07.10.2023 and on the same date, notice was issued to the defendants for 08.11.2023. On 08.11.2023, an advocate had appeared on behalf of defendants No.1 to 3 (petitioners herein) and had filed memo of appearance and had sought time for filing the written statement/reply and thereafter, on 24.01.2024, an application was filed on behalf of the present petitioners for rejection of plaint under Order 7 Rule 11 of CPC. The period of 120 days to file the written statement had elapsed on 07.03.2024 (although recorded in the impugned order as 16.03.2024) and accordingly, an application dated 20.05.2024 (Annexure P-10) was filed by the plaintiff/respondent for striking off the defence of the petitioners/defendants No.1 to 3 under Order VIII Rule 1 CPC read with Order VIII Rule 10 CPC as amended till date. In the said application, it was specifically averred that the maximum period of 120 days had elapsed and thus, the right of the petitioners/defendants No.1 to 3 to file the written statement should be forfeited. A reply dated 02.07.2024 to the said application was filed by the petitioners. It is the case of the petitioners that the written statement dated 02.07.2024 (i.e. after the period of 120 days) was filed. The learned trial Court, vide order dated 09.07.2024 (Annexure P-18), after taking into consideration the law laid by the Hon'ble Supreme Court in case titled as "*M/s SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. and others,*



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reported as 2019(12) SCC 210, observed that a written statement filed beyond the period of 120 days from the date of service of summons cannot be accepted and is liable to be discarded. The argument raised on behalf of the present petitioners to the effect that the application under Order 7 Rule 11 of CPC was filed and thus, an opportunity should be given to file the written statement and to extend the time beyond 120 days was also rejected by relying upon the judgment of the Hon'ble Supreme Court in the case of M/s SCG Contracts India Pvt. Ltd. (supra). It is the said order dated 09.07.2024 which has been challenged by the petitioners/defendants No.1 to 3 before this Court.

3. Learned counsel for the petitioners has submitted that in the present case, an application under Order 7 Rule 11 CPC was filed within a period of 120 days and the same was rejected on 09.07.2024 (Annexure P-19) and the said period (i.e. from filing application under Order 7 Rule 11 CPC up to 09.07.2024) should be excluded for counting the period of 120 days for filing written statement as the petitioners were pursuing the said application under Order 7 Rule 11 CPC. It is further submitted that the petitioners are ready to pay any appropriate cost in case the written statement which has already been filed, is taken into consideration as the impugned order would cause serious prejudice to the rights of the petitioners.

4. Learned senior counsel for the respondents, on the other hand, has submitted that he has instructions to submit that he would not accept any costs and has further submitted that the impugned order is in

accordance with law and deserves to be upheld. It is submitted that the present case is a case which is being conducted by the Commercial Court, Ambala in view of the amount of recovery involved. It is stated that it is settled law that a case tried by the Commercial Court is governed by the Commercial Courts Act, 2015 and as per Section 16 of the Commercial Courts Act, 2015 (hereinafter referred to as 'the 2015 Act'), it is the amended provisions of CPC including the amended provisions of Order VIII Rule 1 and Order VIII Rule 10, which govern the proceedings in Commercial Courts. The details of the amendments made in CPC as applicable to Commercial Courts have been given in the schedule and the relevant portion of which is reproduced herein-below: -

“(D) in Order VIII,—

(i) in rule 1, for the proviso, the following proviso shall be substituted, namely:—

*“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, **but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.**”*

Learned senior counsel for the respondents has submitted that a perusal of the said provision would show that in case the written statement is not filed within the maximum period of 120 days from the date of service of summons, the defendant would then forfeit his right to



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file the written statement and the Court “shall” not allow the written statement to be taken on record. It is submitted that in the present case, since the written statement has been filed after a period of 120 days, thus, the matter is squarely covered by the above-said provision as well as the law laid down by the Hon'ble Supreme Court in the case of **M/s SCG Contracts India Pvt. Ltd. (supra)**.

5. This Court has heard learned counsel for the petitioners as well as learned senior counsel for the respondents and has perused the paper-book.

6. The Hon'ble Supreme Court in the case of **M/s SCG Contracts India Pvt. Ltd. (supra)**, had observed that a perusal of the provisions of Commercial Courts Act, 2015 would show that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and that there is a mandate for the Court not to allow the written statement to be taken on record. It was further observed that merely because an application for rejection of the plaint under Order 7 Rule 11 CPC has been filed, the same cannot be made as a “ruse for retrieving the lost opportunity to file the written statement”. In view of the said proposition of law, the Hon'ble Supreme Court had set aside the impugned order therein, which had permitted the defendant therein to file the written statement beyond the stipulated period of 120 days. The relevant portion of the said judgment is reproduced as under: -

“8) *The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23.10.2015 bringing in their wake certain amendments to*



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the Code of Civil Procedure. In Order V, Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

*“Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other days, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, **but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.**”*

*Equally, in **Order 8 Rule 1**, a new proviso was substituted as follows:*

*“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, **but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.**”*

*This was **re-emphasized by re-inserting** yet another proviso in **Order 8, Rule 10 CPC**, which reads as under:-*

*“Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to **present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him**, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgment a decree shall be drawn up.*

Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”



A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. **What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.**

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11. We are of the view that the view taken by the Delhi High Court in these judgments **is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order VIII Rule 1 on the filing of written statement under Order VIII Rule 1 has now been set at naught.**

12) However, learned counsel appearing for the respondents relied strongly upon the judgment in **Bhanu Kumar Jain (supra) and Shaikh Salim Haji Abdul Khayumsab (supra)** and, in particular, paras 22 and 27 of the first judgment and paras 4 & 19 of the second judgment.

13) We are of the view that since both these judgments dealt with the pre-amendment position, they would not be of any direct reliance insofar as the facts of the present case is concerned.

14) Learned counsel appearing for the respondents also relied upon **R.K. Roja Vs. U.S. Rayudu and another (supra)** for the proposition that the defendant is entitled to file an application for rejection of plaint under **Order VII Rule 11 before filing his written statement. We are of the view that this judgment cannot be read in the manner sought for by the learned counsel appearing on behalf of the respondents. Order VII Rule 11 proceedings are independent of the filing of a written statement once a suit has been filed. In fact, para 6 of that judgment records “However, we may hasten to add**

that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement”.

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17) Clearly, therefore, the 05.12.2017 order which applies in the face of the amendments made to the Civil Procedure Code cannot be sustained.....”

7. In the present case, it is not in dispute that the suit for recovery of Rs.8,78,20,920.17/- was filed on 07.10.2023 and the counsel for the petitioners had appeared on 08.11.2023 and thus, the period of 120 days had elapsed on 07.03.2024, whereas the written statement even as per the case of the petitioners has been filed on 02.07.2024. Moreover, prior to the filing of the written statement dated 02.07.2024, the respondents/plaintiffs had filed an application dated 20.05.2024, under Order VIII Rule 1 CPC read with Section VIII Rule 10 CPC for striking off the defence of petitioners/defendants No.1 to 3 and apparently when notice of the said application was issued to the petitioners, the said written statement dated 02.07.2024 had been filed. Thus, in the said circumstances, keeping in view the above-said provisions and the judgment of the Hon'ble Supreme Court, it was not open to the trial Court to have permitted the petitioners to file the written statement beyond the period of 120 days and the impugned order passed rejecting/discarding the said written statement is in accordance with law. Even the argument raised by learned counsel for the petitioners to the effect that an application under Order 7 Rule 11 CPC had been filed before filing the written statement and the same was decided on 09.07.2024 and the period

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during which the petitioners were pursuing the said application be excluded for counting the period of 120 days for filing written statement cannot be accepted in view of the judgment of the Hon'ble Supreme Court in *M/s SCG Contracts India Pvt. Ltd. (supra)* as a similar argument raised before the Hon'ble Supreme Court has been rejected by the Hon'ble Supreme Court.

8. With respect to the fact that the petitioners are ready to pay the cost, learned senior counsel for the respondents has submitted that he has the instructions to oppose the said prayer and not to accept the same and has prayed that the impugned order be upheld.

9. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the impugned order dated 09.07.2024 (Annexure P-18) passed by the Additional District Judge, Ambala is legal and does not call for any interference and the present civil revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

August 27, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes