



122-2

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4453-2024 (O&M)

Date of Decision : 04.11.2024

Seema Devi

... Petitioner(s)

Versus

Sita Ram & Anr

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.S. Mamli, Advocate for the petitioner.

Mr. Kanwar Bhan Sidhu, Advocate for respondent Nos.1 and 2.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed against the impugned order dated 30.05.2023 (Annexure P-2) whereby the defense of the defendant No.1-petitioner has been struck off for not filing her written statement.

2. Learned counsel for the defendant No.1-petitioner 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. The learned counsel would further contend that a FIR had been lodged against the defendant No.1-petitioner by the plaintiff-respondent No.1 herein and since she was seeking anticipatory bail in the said FIR, hence, the written statement could not be filed. The learned counsel would further contend that given one opportunity the

defendant No.1-petitioner would file her written statement and that she is also willing to compensate plaintiff-respondent Nos.1 and 2 by way of costs.

3. *Per contra* the learned counsel for the plaintiff-respondent Nos.1 and 2 would contend that despite 90 days having elapsed, the written statement was not filed by the defendant No.1-petitioner and hence her defense has rightly been struck off. It is further the contention of the learned counsel that sufficient time has already been granted to the defendant-No.1-petitioner to file her written statement and that she is only trying to delay the matter.

4. Heard.

5. In the present case, since the defendant No.1-petitioner was seeking anticipatory bail in an FIR lodged against her by the plaintiff-respondent No.1, the written statement could not be filed and her defense was struck off vide the impugned order. The learned counsel for the defendant No.1-petitioner has stated that given one opportunity, the defendant No.1-petitioner would file her written statement.

6. 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.”

7. In view of the above and 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 impart complete justice, one opportunity is granted to the defendant No.1-petitioner to file her written statement within a period of 15 days from the date of passing of this order, subject to payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent Nos.1 and 2, which shall be a condition precedent.

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

04.11.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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