



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

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CR-5007-2024**Date of Decision: 02.09.2024****Suresh Kumar Goyal**

....Petitioner

Versus

Naresh Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Lupil Gupta, Advocate and
Mr. Nitin Goswami, Advocate
for the petitioner.

VIKAS SURI, J. (Oral)

1. This revision petition under Article 227 of the Constitution of India has been filed assailing the order dated 19.07.2024 (Annexure P-9) passed by Additional Civil Judge (Senior Division), Nihal Singh Wala, Moga, whereby the application under Order 8 Rule 1 CPC filed by the plaintiff/petitioner to strike off the defence of the defendant/respondent, for not having filed the written statement within 90 days, has been dismissed.

2. Brief facts of the case are, plaintiff filed a suit for recovery of Rs.10,64,000/-, (Rs.8,00,000/- as principal amount and Rs.2,64,000/- as interest @ 1% per annum from 01.04.2020 to 01.01.2023) on the basis of pronote and receipt dated 01.04.2020. The suit was instituted on 31.03.2023 and upon notice, the defendant/respondent appeared in person on 03.11.2023 and sought time. The matter was thereafter adjourned to 12.01.2024 for filing



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written statement as well as power of attorney. As the learned Presiding Officer was on medical leave, the proceedings were further deferred to 01.03.2024. On the said hearing, the defendant again appeared in person and sought further time for filing written statement and the proceedings were further deferred to 20.03.2024. Thereafter, the defendant/respondent was represented by counsel and the proceedings were further adjourned to 08.05.2024 for filing written statement. Yet another adjournment was sought for the same purpose and the proceedings were deferred to 15.05.2024 subject to payment of cost the written statement was filed by the defendant/respondent on 15.05.2024 and the said cost was also deposited.

3. The plaintiff/petitioner moved an application under Order 8 Rule 1 CPC on 03.04.2024 praying that as the written statement had not been filed within the period of 90 days, the defence of defendant/respondent be struck off. Upon notice of the aforesaid application, the same was contested by filing reply. The trial Court considering the rival submissions advanced on behalf of the parties, and relying upon the law laid down by the Hon'ble Supreme Court in ***Kailash vs. Nankhu and others, (2005) 4 SCC 480***, dismissed the said application.

4. I have heard learned counsel for the parties and perused the record.

5. It is not disputed that the suit for recovery instituted by the plaintiff/petitioner is not a commercial dispute that would be governed by the Commercial Courts Act, 2015.

6. In ***Desh Raj vs. Balkishan (Dead) through Proposed Legal***



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Representative Ms. Rohini, (2020) 2 SCC 708, the timeline for filing of written statement came up for consideration before a three-Judge Bench of the Hon'ble Supreme Court. Their Lordships of the Apex Court held that in a non-commercial dispute matter, the unamended provision of Order 8 Rule 1 CPC continues to be directory and does not do away with the inherent discretion of the Courts to condone delay. It is also well settled that the provision of Order 8 Rule 1 CPC is directory and not mandatory. The ratio in **Desh Raj's case** (supra) and **Kailash's case** (supra) was re-affirmed by the Apex Court in **Bharat Kalra vs. Raj Kishan Chabra, 2022 SCC Online SC 613**.

7. In view of the above discussion and the law settled by the Hon'ble Supreme Court, in my considered opinion, the impugned order does not suffer from any illegality, infirmity or perversity, so as to warrant interference by this Court.

8. Resultantly, the petition being devoid of merit, is dismissed.

(VIKAS SURJ)
JUDGE

September 02, 2024
Varinder

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No