



128

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

CR-6678-2024 (O&M)

Date of Decision : 27.11.2024

Deepa Sharma

... Petitioner(s)

Versus

Dr. (Major) Girwar Kumar & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Monika Jangra, Advocate for the petitioner.

Ms. Shallu Aggarwal, Advocate for the respondent No.1.

Mr. Pankaj Middha, Addl. AG Haryana
for the respondent Nos.2, 7 and 8.

Ms. Meenakshi Bali, Advocate for the respondent No.3.

Mr. Vineet Chaudhary, Advocate for the respondent No.5.

Ms. Upasna Gandhi, Advocate for
Mr. Raj Mohan Singh, Advocate for respondent No.6.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the impugned order dated 28.05.2024 (Annexure P-3) whereby the defense of the defendant No.2-petitioner has been struck off for not filing the written statement.

2. Learned counsel for the defendant No.2-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 given one opportunity the defendant No.2-petitioner would file her written statement within a period of ten days from today and that the defendant No.2-petitioner is also willing to compensate the plaintiff-respondent No.1 by way of costs.

3. *Per contra* the learned counsel for the plaintiff-respondent No.1 (contesting respondent) would contend that despite 12 opportunities the written statement was not filed and there is not even a whisper as to the reason why the written statement was not filed.

4. Heard.

5. In the present case the defense of the defendant No.2-petitioner has been struck off due to non-filing of the written statement despite 90 days having elapsed.

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. No doubt the defendant No.2-petitioner has been remiss in filing the written statement as despite 12 opportunities she has not filed her written statement. However, keeping in view the nature of the litigation wherein her appointment has been challenged by the plaintiff-respondent No.1 to the post of Data Entry Operator and 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 do complete justice between the parties, this Court deems it fit to grant one opportunity to the defendant No.2-petitioner to file her written statement within a period of ten days from today, subject to payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent No.1, which shall be a condition precedent. It is made clear that in case the costs are not paid by the defendant No.2-petitioner, the present civil revision petition shall be deemed to having been dismissed.

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

27.11.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

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