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

CR-7229-2024

Date of decision: 12.12.2024

Satyapal Singh Verma and another

...Petitioners

Versus

State Bank of India

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Munfaid Khan, Advocate for the petitioners.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 14.10.2024 passed by the Civil Judge (Junior Division), Faridabad (Commercial Court) vide which the written statement of the petitioners was not taken on record on the ground that the same has been filed beyond the period of 120 days in Civil Suit No.26/2023 titled as “State Bank of India Vs. Satyapal Singh Verma etc.”

2. Learned counsel for the petitioners has submitted that in the present case, the suit against defendant No.3 was withdrawn on 05.12.2023 and the case was adjourned to 06.01.2024 for filing written statement on behalf of defendant Nos.1 and 2/petitioners and the petitioners had filed their written statement but by virtue of the impugned order dated 14.10.2024, it had been observed that since written statement had not been filed within a period of 120 days thus, the said written statement was taken off the record. It is submitted



that in case the said written statement is taken off the record then serious prejudice would be caused to the defence of the petitioners.

3. This Court has heard learned counsel for the petitioners and has perused the paper book.

4. The Hon'ble Supreme Court in the case of **"M/s SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd. and others"**, reported as **2019(12) SCC 210**, 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 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; nonextension 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..... ”

5. In the present case, it is not in dispute that the respondent-State Bank of India had filed a suit for recovery against the petitioners, who were defendant Nos.1 and 2 and one defendant No.3. It has not been disputed that the said suit is being tried by the Commercial Court. It is also not in dispute that the petitioners, who are defendant Nos.1 and 2 in the suit, had appeared on 06.05.2023 and the period of 120 days from the date of their appearance would have lapsed on 05.09.2023 and no written statement was filed by the petitioners on the said date. Thus, in view of the law laid down by the Hon’ble Supreme Court in the abovesaid judgment, the petitioners have forfeited their rights to file their written statement and filing of the written statement on a subsequent date is not permissible in law and thus, same has been rightly taken off the record vide the impugned order.

6. Keeping in view the abovesaid facts and circumstances, the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

12.12.2024

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No