



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

CR-559-2025 (O&M)
Date of decision :12.03.2025

Sukhwant Kaur

..... Petitioner

versus

Harpinder Singh & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Mohd. Jameel, Advocate
 for the petitioner.

PANKAJ JAIN, J. (ORAL)

CM-2138-CII-2025

For the reasons recorded in the application, the same is allowed.

Document Annexure P-3 is taken on record.

Main case

1 Challenge is to order dated 10.12.2024 (Annexure P-2) passed by Civil Judge (Junior Division), Malerkotla whereby defence of the petitioner has been ordered to be struck off. For convenience, parties hereinafter are referred to by their original position i.e. the petitioner as defendant, respondent No.1 as plaintiff and proforma respondents No.2 & 3 as defendants.

2 The suit was filed on 20.06.2024. Notice was issued on 21.06.2024 to the defendant-petitioner for 06.07.2024. The petitioner appeared on 06.07.2024, sought time to file written statement. The matter was adjourned to 14.08.2024. Thereafter to 02.09.2024 and then to



07.10.2024. On 07.10.2024 one last opportunity was granted to the petitioner to file written statement by next date of hearing i.e. 10.12.2024 subject to payment of Rs.500/- costs. The petitioner neither deposited the costs nor filed written statement.

3 Learned counsel for the petitioner submits that the written statement could not be filed in time owing to serious medical ailment being suffered by son of the petitioner. In order to substantiate his plea, he relies upon the medical record of the petitioner as well as her son placed on record along with CM No.2138-CII-2025.

4 The Supreme Court in *Atcom Technologies Ltd. V. Y.A.Chunawala & Co., (2018) 6 SCC 639* held that the mandate of Order 8 Rule 1 CPC is directory and not mandatory and the same has been further reiterated in the case of *Desh Raj Vs. Balkishan (D) through proposed LR Ms. Rohini (2020) RCR Civil 807* observing 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 non commercial 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 timeline 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.”*

5 In view of the aforesaid ratio of law, the petitioner is granted one last opportunity to file written statement. The same be filed on or before 28.03.2025 along with the application subject to payment of costs of Rs.1,500/- that includes the costs imposed in the impugned order.

6 The revision petition is accordingly disposed off.

12.03.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No