



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

CR-991-2025 (O&M)

Reserved on: 11.11.2025

Pronounced on : 17.12.2025

Uploaded on: 19.12.2025

M/s Ramnprastha Estate Pvt. Ltd.

...Petitioner

V/s

Ankit and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Sanjay Vij, Advocate and
Mr. Uday Vij, Advocate, for the petitioner.

Mr. Amit Jain, Advocate,
for respondents No.4, 5, 7, 11 to 13, 15, 16 and 17(i), 17(v),
17(vi) and 17(vii).

VIKRAM AGGARWAL, J

The instant revision petition, preferred under Article 227 of the Constitution of India, assails the order dated 26.09.2024 (Annexure P-1), passed by the Court of Civil Judge (Jr. Divn.), Gurugram, vide which order dated 12.11.2021 striking off the defence of the respondents-defendants on account of non-filing of the written statement was recalled and the respondents-defendants were permitted to file written statements subject to payment of Rs.1000/- as costs by each of them.

2. Shorn of unnecessary details, the facts emerging from the petition are that a suit for declaration and specific performance with consequential relief of permanent injunction was instituted by the petitioner-plaintiff (M/s Ramnprastha Estate Pvt. Ltd.) (hereinafter referred to as the petitioner-plaintiff) against 23 defendants including the present respondents (hereinafter referred to as the respondents-defendants). Since

the requisite pleadings have not been placed on record, the facts of the case are not available but it appears and it was argued that the dispute, as happens in most cases, stems from some collaboration agreement/agreement to sell.

2.1 Vide order dated 12.11.2021, the defence of the respondents-defendants was struck off on account of non-filing of written statement.

2.2 An application (Annexure P-2) was preferred by the respondents-defendants for setting aside the said order dated 12.11.2021 and permitting the respondents-defendants to file their written statement. It was averred in the application that though they had been appearing before the Court for quite a while, no effective proceedings could take place on account of the prevailing pandemic and other factors. It was averred that the respondents-defendants had always been willing to file their written statement and in fact, the same was ready. However, many of the defendants had expired and applications for impleading legal representatives of defendants No.14, 17, 18 and 19 were pending. It was averred that defendants No. 1 to 20 belonged to the same family and were, therefore, under an impression that once the legal representatives were brought on record, written statements could be filed by all defendants. It was averred that the petitioner-plaintiff wanted specific performance of a development agreement and agreement to sell which pertained to an extremely valuable piece of land belonging to the respondents-defendants and that under the circumstances, it would be in the interest of justice that the written statement be permitted to be filed. It was also submitted that since the trial has not yet commenced, no prejudice would be caused to the petitioner-plaintiff.

2.3 The application was opposed by way of a reply (Annexure P-3) wherein, all amendments were denied and it was prayed that the application

3. By way of the impugned order, the said application was allowed leading to the filing of the instant revision petition.

4. Learned counsel for the parties were heard.

5. It was strenuously urged by Sh. Sanjay Vij, learned counsel representing the petitioner-plaintiff that the trial court had exercised a power which did not vest in it and that it had erroneously recalled order dated 12.11.2021 vide which defence had been struck off. It was submitted that there is no provision in law as per which such an order could have been passed.

5.1 It was further submitted that though the provisions of Order 8, Rule 1 of the Code of Civil Procedures, 1908 (for short "the CPC") are directory, they cannot be stretched beyond a certain limit, as has been repeatedly held by the Hon'ble Apex Court and by this Court. It was submitted that the respondents-defendants had entered appearance on 06.07.2018 and 30 days expired on 05.08.2018. Further, 90 days period expired on 05.11.2018 whereas, defence was struck off vide order dated 12.11.2021. Learned counsel submitted that no written statement was filed for a period of 3 years and despite this, the order dated 12.11.2021 was recalled in September 2024. It was submitted that under no circumstances can the said order be upheld.

5.2 Learned counsel also, while referring to the application Annexure P-2 submitted that even in the application there was no reference of the period from 2018 to 2021. It was submitted that the respondents-defendants had miserably failed to even *prima facie* show their *bona fides* and that under the circumstances, no indulgence could have been granted to them. It was submitted that the impugned order has caused grave prejudice

placed reliance upon the judgments in the case of *Federal Brands Ltd. vs. Cosmos Premises Pvt. Ltd. (Writ Petition No.105 of 2024, decided 02.08.2024 by the High Court of Bombay at Goa)*, *ATCOM Technologies Limited vs. Y.A. Chunawala and company and others, (2018) 6 SCC 639*, *Vijay Kumar vs. Urban Improvement Trust, 2019 (4) Civil Court Cases 612 (Rajasthan)*, *Ram Nath alias Ram Nath Sharma and another vs. Smt. Pushpa, 2020(2) Civil Court Cases 623 (Allahabad)*, *Saranpal Kaur Anand vs. Praduman Singh Chandhok and others, (2022) 8 SCC 401*, *Joseph Shine vs. Union of India, (2024) 2 SCC 334*, *Supertech Limited vs. Emerald Court Owner Resident Welfare Association and others, (2023) 10 SCC 817* and *Government of NCT of Delhi through its Secretary, Land and Building Department and another vs. K.L. Rathi Steels Limited and others, (2024) 7 SCC 315*.

6. *Per contra*, Sh. Amit Jain, learned counsel representing the respondents-defendants, while defending the impugned order, submitted that the trial Court had taken a pragmatic view of the matter since no effective proceedings had taken place and the suit was still at the stage of completion of pleadings. While referring to the interlocutory orders, it was submitted by learned counsel that the trial Court, in fact, adopted a fair and transparent procedure and rightly permitted the respondents-defendants to submit their written statement which had already been annexed with the application.

6.1 Learned counsel also submitted that there is no provision of law restraining a Court from exercising the power which the trial Court did, by recalling the order dated 12.11.2021. Learned counsel also submitted that the matter pertains to a very valuable piece of land and that under the circumstances, it would be essential that the defence of the respondents-

irreparable loss and it would cause grave prejudice to them. In support of his contentions, learned counsel placed reliance upon the judgments of coordinate Benches of this Court in the case of *Sucha Singh and others vs. The State of Punjab through the Collector, Faridkot and others*, 1990(2) PLR 492, *Darshan Singh and others vs. Gurmeet Singh* (CR-7254-2017, decided on 07.11.2017), *Jasdev Singh vs. Jarnail Singh* (CR-880-2021, decided on 09.04.2021), *Punjab State and others vs. Pardeep Kumar*, (CR-4-2018, decided 08.01.2018), *Angoori Devi vs. Jainendra Gurukul Panchkula* (CR-8714-2015, decided on 22.04.2016), *Pritam Singh and others vs. Bimla Devi and others*, (CR-5134-2023, decided on 05.09.2023) and *a judgment of the Hon'ble Supreme Court of India in Desh Raj vs. Balkishan (D) through Proposed LR Ms. Rohini*, 2020 (1) RCR (Civil) 807.

7. I have considered the submissions made by learned counsel for the parties.

8. Before advertng to the merits of the case, it would be apposite to have a look at the statutory provisions and the law on the subject.

Order 8 Rule 1 CPC lays down as under:-

“Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

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 same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

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 twenty days from the date of service of summons and on expiry

of one hundred 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.”

9. After the amendment of CPC in 2002, the Hon’ble Apex Court held in the case of ***Salem Advocate Bar Association Tamil Nadu v. Union of India***, (2005) 6 SCC 344:-

"21. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1."

9.2 Thereafter, in the case of **Atcom Technologies Ltd.** (supra), the Apex Court held that the provisions of Order 8 Rule 1 CPC do not take away the power of the Court to accept written statement beyond the time fixed in the provision and that the nature of the provision was procedural and it is not a part of substantive law. It was also held that at the same time, time could be extended only in exceptionally hard cases. This judgment holds the field even today. A Three Judges Bench of the Hon’ble Apex Court in the case of **Desh Raj** (supra) held that as regards the timeline for filing of written statement in a non-commercial dispute, the observations of the Apex Court in a catena of decisions and particularly in the case of **Atcom Technologies Ltd.** (supra) holds the field. It was held that the unamended Order 8 Rule 1 CPC continues to be directory and does not do away with the inherent discretion of Courts to condone certain delays. This Court also dealt with a

similar issue in the case of **Punjab State Grain Procurement Corporation Ltd. and others Vs. Gill Rice Mills and others**, 2025 (4) RCR (Civil) 785, wherein it was held as under:-

41. The issue that the provisions of Order VIII Rule 1 CPC are not mandatory but directory, is also well settled. A three judges Bench of the Hon'ble Supreme Court of India in the case of Deshraj v. Balkishan (Dead) through proposed legal representative Ms. Roshini, 2020(2) SCC 708 held that the power to condone the delay in filing the written statement beyond the prescribed period of 90 days applies to non-commercial suits and not to commercial suits. The Hon'ble Supreme Court of India examined the two regimes of CPC post coming into force of the Commercial Courts Act. It was held that the timeline of filing of the written statement in a non-commercial dispute would be governed by the unamended Rule 8(1) CPC and continued to be directory and does not do away with the inherent discretion of Courts to condone certain delays. However, where the dispute is commercial, it would be governed by CPC as amended by Section 16 of the Commercial Courts Act and the provisions of Order VIII Rule 1 would be mandatory, meaning thereby the delay in filing the written statement could not be condoned. The Hon'ble Supreme Court of India also held that judgment in the case of SCG Contracts (India) Pvt. Ltd. (supra) would be applicable only to commercial suits: "

10. This was opposed on behalf of the respondent who asserted that multiple chances had already been granted to the appellant by the Civil Court, including opportunities beyond the maximum statutory period of 90 days as provided for filing of written statement under Order 8 Rule 1 of CPC. It was argued that continued failure to adhere to the multiple deadlines set by the Civil Court and violation of Court directions, was evidence of gross negligence on part of the appellant at best, and a deliberate delaying tactic and abuse of the process of law at the worst.

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., 2019(2) RCR (Civil) 249: 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 8, Rule 1 CPC."

42. Notably, the Hon'ble Supreme Court of India while upholding the judgment in the case of Atcom Technologies Ltd. v. Y.A. Chunawala & Co. and others, 2018(6) SCC 639, held that the provisions of Order VIII Rule 1 CPC are not mandatory but merely directory."

10. Reverting to the facts of the present case, though the interlocutory orders have not been placed on record, they were produced during the course of hearing. A bare perusal of the orders shows that the

matter remained pending for service of parties, for bringing on record legal representatives, for filing of written statement etc. Vide order dated 12.11.2021, the defence of the respondents-defendants was struck off;

Today the case was fixed for filing written-statement on behalf of defendants no. 4, 5, 7, 11 to 13, 15, 16 and arguments on the application for impleading LRs of defendants no. 14, 17, 18 and 19. Written-statement not filed. Perusal of the case file reveals that several opportunities have been availed by the defendant for filing written-statement but written-statement has not been filed by the defendant. Perusal of the case file shows that defendant put up their appearance in the instant case on 06.07.2018 and since then written-statement has not been filed by the defendant no. 4, 5, 7, 11 to 13, 15, 16. Hence, in view of the same, no ground is made out to give further opportunity to defendants no. 4, 5, 7, 11 to 13, 15, 16 for file written-statement. Therefore, defense of defendants no. 4, 5, 7, 11 to 13, 15, 16 is hereby struck off.

An application for impleading the legal heirs of deceased defendant no. 18 has been filed. Copy supplied. Now, to come up on 18.01.2022 for filing reply to the above-mentioned application.

Arguments on the application for impleading LRs of defendants no. 14, 17, 18 and 19 shall also be heard on the date fixed.”

11. No doubt the respondents-defendant had caused appearance on 06.07.2018 and defence was struck off on 12.11.2021 i.e. more than after 3 years. The trial Court did not commit any illegality in striking off the defence.

12. However, a perusal of the interlocutory orders further shows that even after the passing of this order, the matter did not proceed and remained pending for completion of pleadings, for filing of written statements, for bringing on record legal representatives and for setting aside ex parte orders etc.

13. After the matter remained pending for arguments on an application for setting aside ex parte proceedings against certain defendants,

dated 20.08.2024. In the meantime, an application for setting aside order dated 12.11.2021, vide which the defence had been struck off, had also been filed on 02.05.2022. This application also remained pending and was eventually allowed vide the impugned order dated 26.09.2024.

14. Under ordinary circumstances, there would have been no occasion for granting any further opportunity to the defendants to file their written statement, since they had been granted adequate opportunities, despite which they did not file their written statements. However, as noticed above, even thereafter, the matter did not proceed and remained pending for completion of pleadings etc. Under the circumstances, keeping in view the fact that valuable rights of the parties are involved, the trial court appears to have taken the decision of recalling order dated 12.11.2021. In the considered opinion of this court, the trial court did not commit any illegality in doing so. In fact, it took a pragmatic and practical view of the matter and allowed the application. It is well settled that parties should not normally be rejected on technicalities and that they should be allowed to contest on merits. No doubt, in *Atcom Technologies (supra)* and many other cases, inordinate delay in filing the written statement was frowned upon and no opportunity was granted. However, though the law remains the same, the facts of the instant case are slightly different as the matter had not proceeded even after the passing of the order dated 12.11.2021, vide which the defence of the respondent's defendants had been struck off.

15. As regards the power of the trial Court to pass such an order, though under normal circumstances, such an order would not be passed, there is no provision preventing a court from doing so. The trial Court, while considering the fact that the matter was still at the initial stage,

opinion of this court, was done purely in the interest of justice. Such orders have earlier also been upheld. The trial court also imposed costs of Rs.1000 to each of the respondent's defendants. At best, the trial court could have imposed more costs as the written statement was being permitted to be filed after huge delay. Such instances cannot, under any circumstance, be taken to be precedents and are passed in peculiar facts and circumstances of a particular case.

15. That being so, this court does not find any illegality in the impugned order, warranting interference under Article 227 of the Constitution of India. However, the costs imposed upon the respondents-defendants are enhanced from Rs.1000/- per head to Rs.5000/- per head, which shall be deposited by the District Legal Services Authority, Gurugram.

16. In view of the above, except for the modification in the costs, the instant revision petition is found to be devoid of merit and is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 17.12.2025
vcgarg

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No