



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

RSA-305-2021(O&M)
Reserved on: 02.08.2025
Pronounced on: 28.10.2025

Punjab State Grain Procurement Corporation Limited and others
... Appellants

Versus

M/s Gill Rice Mills
... Respondent

2. **RSA-199-2021(O&M)**

M/s Gill Rice Mills
... Appellant

Versus

Punjab State Grain Procurement Corporation Limited and others
... Respondents

3. **CR-4288-2019(O&M)**

Sanyogta
... Petitioner

Versus

M/s Gill Rice Mills and others
... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Shailendra Jain, Senior Advocate, with
Mr. TPS Sidhu, Advocate,
Mr. Ravinder Kumar, Advocate, and
Mr. Rahul, Advocate,
for the appellants (in RSA-305-2021); and
for the respondents (in RSA-199-2021).

Mr. Sanjay Kaushal, Senior Advocate, with
Mr. Arjun Shukla, Advocate,
Mr. Arjun Kaushal, Advocate,
Mr. Abhimanyu Kaushal, Advocate, and
Mr. Ankit Rana, Advocate,
for the appellant (in RSA-199-2021); and
for the respondents (in RSA-305-2021 & CR-4288-2019).

Mr. J.S. Mahal, Advocate, for
Mr. Maninder Bajwa, Advocate,
for the petitioner (in CR-4288-2019).



VIKRAM AGGARWAL, J.

By way of the instant judgment, this Court proceeds to decide the afore-titled two regular second appeals and one civil revision petition. The facts, being common, shall essentially be derived from RSA-305-2021. However, reference to facts out of which the other two petitions arise shall also be made, as and where necessary.

FACTS

2. The dispute at hand, yet again, is between a State Grain Procurement Agency and a Rice Miller. The States of Punjab and Haryana have witnesses large scale disputes between the Grain Procurement Agencies and Rice Millers. The dispute, invariably, is non-milling of paddy allotted to a particular Rice Miller, leading registration of FIRs, initiation of arbitration proceedings, filing of civil suits etc. The net result is huge losses, mostly to the State exchequer, though depicted as losses to Rice Millers. The question that arises in the mind of the Court is as to whether such disputes are deliberately raised, or is there some fault in the policies, or is it a criminal meeting of minds aimed at misappropriating public money. Of course, different cases have different facts, but the fact remains that crores of rupees go down the drain in such disputes.

3. Shorn of unnecessary details, the facts leading to the instant dispute are that M/s Gill Rice Mills, Batala, District Gurdaspur (hereinafter referred to as the '**Miller**') was allotted paddy by the Punjab State Grain Procurement Corporation Limited [hereinafter referred to as the '**Procurement Agency**'] vide allotment letter dated 23.11.2012. 35000



quintals of paddy was required to be custom milled by the Miller for the milling season 2012-13. The said allotment was made in terms of the Custom Milling Policy 2012-13, issued vide communication dated 27.09.2012 by office of the Commissioner, Food & Civil Supplies and Consumer Affairs, Punjab.

4. Notably, the same Miller had been allotted paddy for the crop year 2011-12 as well, which is stated to have been completed on 31.12.2012. However, the present dispute pertains to the crop year 2012-13.

5. 35000 quintals paddy is stated to have been entrusted to the Miller for custom milling. On a request having been made by the Miller, additional stocks of paddy were allotted to it. It is the case of the Procurement Agency that the total paddy stored with the Miller was about 78033.90 quintals, comprising of 222954 bags. In terms of the Policy and Agreement arrived at between the parties, the milled rice was to be delivered to the Food Corporation of India (for short, 'FCI'). Milling charges were to be paid to the Miller after delivery. It is the case of the Procurement Agency that the Miller did not deliver even a single grain of milled rice to the FCI, which led to a physical verification of the Miller's premises on 26.01.2013, after which a shortage of 169583 bags of paddy was reported. Consequently, the Miller's premises was sealed and locked on the same day, i.e. 26.01.2013.

6. FIR No.73 dated 01.03.2013 was also registered at Police Station Civil Lines Batala, District Gurdaspur, under Sections 406 & 420 IPC against the Miller. This led to initiation of litigation, which included CWP-18003-2013 filed by the Miller, seeking directions to the Procurement



Agency not to interfere in the milling of the paddy and permit the Miller to sell the resultant rice.

7. Notice of motion in the said writ petition was issued on 02.09.2013, after which various applications were filed.

8. In the meantime, the Miller filed another writ petition [CWP-22957-2013], seeking a writ of mandamus directing the authorities to hand over possession of its mill for operation. The said writ petition was disposed of vide order dated 29.10.2013, with a direction to the Miller to serve a legal notice raising his grievance(s) to the Deputy Commissioner, Gurdaspur, who would decide the said legal notice within a period of three weeks.

9. A fact-finding inquiry was conducted by the Deputy Commissioner, Gurdaspur, in compliance of the directions issued vide order dated 29.10.2013, and passed an order dated 21.01.2014 arriving at certain findings, including that the Miller had embezzled Government paddy stock to the extent of 1,69,583 bags (59,354.05 quintals).

10. An order dated 28.01.2014 was passed by a coordinate Bench in CM-1033-2014 in CWP-18003-2013, directing the Bank to sell the paddy and rice lying in the premises of the Miller and to adjust the amount recovered in the loan account of the Miller.

11. A letters patent appeal (LPA-2504-2014) was filed by the Procurement Agency against the order dated 28.01.2014, which was disposed of with an observation that the Agency could take an appropriate course of action by filing a proper application before the learned coordinate Bench. Thereafter, a review application was filed seeking review of order dated 28.01.2014 (CWP-18003-2013). Arguments in the said application



were heard and judgment was reserved on 10.07.2014. Eventually, the aforesaid writ petition was dismissed vide order dated 30.07.2014.

12. Subsequently, a civil suit (CS-000761-2014) was filed by the Miller for recovery of Rs.15,12,000/- along with interest @ 18% per annum.

13. In the meanwhile, against the judgment dated 30.07.2014 (in CWP-18003-2013), LPA-1278-2014 was filed by the Miller, which was dismissed vide order dated 12.08.2014. Thereafter, a review application was also filed, which too was dismissed vide order dated 08.05.2015.

14. Parallely, arbitration proceedings were initiated in March 2014 by the Procurement Agency in terms of Clause 27 of the Agreement, and a claim of Rs.153224537/- was filed.

15. Against the judgment dated 12.08.2014, passed in LPA-1278-2014, and order dated 08.05.2015 passed in the review application, the Miller filed SLPs-29676-29677-2015, wherein certain directions were issued by the Hon'ble Supreme Court of India as regards deposit of amount before the Registry of the Supreme Court.

16. In compliance of the directions issued by the Hon'ble Supreme Court, a public auction of stock of paddy and rice was conducted, and the same was auctioned for Rs.2,03,45,066/-.

17. Even the tender process was assailed by the Miller by filing a civil suit (CS/202/2015).

18. An application under Section 8 of the Arbitration & Conciliation Act, 1996 (for short, '**the 1996 Act**') was filed by the Procurement Agency seeking reference of the dispute to the Arbitrator. Vide



order dated 14.01.2016, the matter was accordingly referred to the Arbitrator.

19. Meanwhile, proceedings continued before the Hon'ble Supreme Court and orders were passed from time to time.

20. Thereafter, the Miller filed a fresh civil suit (CS/1161/2018) against the Procurement Agency for recovery of Rs.8,72,13,125/- along with interest @ 18% pa. It is this civil suit out of which the Regular Second Appeals and the Civil Revision have arisen. Detailed reference to the proceedings in other cases is not being made, as the same is not essential for the purpose of deciding the instant appeals and the revision petition.

21. In the aforesaid suit, the defence of the Procurement Agency was struck off by the trial Court vide order dated 24.04.2019 on account of the written statement not having been filed.

22. A revision petition (CR-3408-2019) was instituted against the said decision (by defendants No.1 & 2 in the civil suit), which too was dismissed vide order dated 23.05.2019. A review application (RA-CR-110-2019) was also filed seeking review of the order dated 23.05.2019, which came to be dismissed by a coordinate Bench vide order dated 08.07.2019.

23. A special leave petition (SLP-22872-2019) was filed against the said orders. However, by the time, the matter came up for hearing before the Hon'ble Supreme Court of India, the suit had been decided vide judgment and decree dated 29.07.2019 and, therefore, the Hon'ble Supreme Court held that the petitioner shall have the remedy of filing an appeal against the said judgment and decree and all questions raised before the Hon'ble Supreme Court would be open to be raised in the appeal, if so filed.



24. The civil suit for recovery was decreed by the Court of Civil Judge (Jr. Divn.), Gurdaspur, vide judgment and decree dated 29.07.2019. A decree of recovery of Rs.15,69,00,419.29 was passed along with future interest @ 18% per annum from the date of institution of the suit till realization. The appeal preferred by the Procurement Agency against the said judgment and decree was partly allowed and the Miller was held entitled to recover Rs.5,42,13,125/-:

“19. In view of the above discussion, the present appeal is partly allowed and partly dismissed with proportionate costs throughout. The respondent is entitled to recover Rs.5,42,13,125-00/- from the appellants being the difference between the actual value of the stock available in the mill and the amount deposited by appellants in the Registry of Hon’ble Apex court. The respondent is also entitled to recovery yearly profit at the rate of Rs.54,45,848.24/- per year from the appellants from 11/09/2015 til 31/03/2019. He is also entitled to recover interest at the rate of 9% per annum from the date of accrual of cause of action i.e. 11/09/2015 till the date of decree i.e. 29/07/2019 with future interest at the rate of 6% per annum till the realization of amount in question...”

25. It is against this decision that both Regular Second Appeals have been filed, one by the Procurement Agency and the other by the Miller. The revision petition has been filed by Sanyogta (defendant No.3 in the civil



suit) against the order dated 24.04.2019, vide which the defence of the Procurement Agency was struck off.

26. Notably, vide order dated 01.08.2019, notice of motion was issued in the revision petition and the trial Court was directed not to pronounce the final order. However, subsequently, the revision petition was ordered to be heard along with the Regular Second Appeals.

ARGUMENTS

27. Learned Senior counsel representing the parties were heard. During the course of arguments, it was agreed that the issue of striking off the defence be decided before going into the merits of the case. If the order striking off the defence is found to be illegal, the same would have to be set aside, and the matter would be remitted to the trial Court for a fresh decision. However, in case, the order is found to be valid in law, the matter would proceed to be decided on its merits.

28. Mr. Shailendra Jain, learned Senior counsel representing the Procurement Agency, strenuously urged that the defence had wrongly been struck off by the trial Court. He referred to the interlocutory orders passed by the trial Court right from the institution of the suit till the striking off the defence and submitted that the trial Court had erred in striking off the defence of the Procurement Agency. He submitted that at the first available opportunity, an application under Section 8 of the 1996 Act was filed for referring the matter to arbitration. He further submitted that once the application under Section 8 of the 1996 Act had been filed, there was no occasion for the Procurement Agency to have filed the written statement and, in fact, filing the same is not permissible. Further, he submitted that



immediately after the rejection of the application under Section 8 of the 1996 Act, the written statement was filed, but by that time the defence had already been struck off.

29. Learned Senior counsel further submitted that the coordinate Bench also erred in rejecting the revision petition while relying upon the judgment of the Hon'ble Supreme Court of India in the case of M/s SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. and others, 2019(2) RCR (Civil) 249 (SC). He submitted that the said judgment was applicable only to commercial disputes and not to non-commercial disputes. Therefore, the coordinate Bench had wrongly placed reliance on it while dismissing the revision petition and the review application.

30. Learned Senior counsel submitted that by the time the matter was decided by the Hon'ble Supreme Court of India, the civil suit had already been decided, whereafter a copy of SLP was placed on the record of the first appellate Court and arguments were addressed on the issue of striking off the defence as well in terms of the liberty granted by the Hon'ble Supreme Court. However, the first appellate Court also erroneously turned down the arguments advanced by the Procurement Agency qua striking off the defence.

31. Learned Senior counsel submitted that a manifest error was first committed by the coordinate Bench and subsequently by the first appellate Court in upholding the order vide which the defence of the petitioner had been struck off.



32. Learned Senior counsel submitted that it is well settled that the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 (for short, 'CPC') are not mandatory but merely directory, and that the trial Court should have taken into consideration the circumstances in which the written statement was not filed. He submitted that the order passed by the trial Court, vide which the defence was struck off, is not sustainable. In support of his contentions, learned Senior counsel placed reliance upon the decisions of the Hon'ble Supreme Court of India rendered in Desh Raj v. Balkishan (D) Through Proposed LR Ms. Roshini, 2020(2) SCC 708; Atcom Technologies Ltd. v. Y.A. Chunawala & Co. and others, 2018(6) SCC 639; Shantilal Gulabchand Mutha v. Tata Engineering and Locomotive Co. Ltd. and another, 2013(4) SCC 396; Zolba v. Keshao and others, 2008(11) SCC 769; Gulshan Kumar v. Asha Taneja, 2006(2) RCR (Civil) 556; Smt. Rani Kusum v. Smt. Kanchan Devi and others, 2005(6) SCC 705; Salem Advocate Bar Association, Tamil Nadu, v. Union of India, 2005 AIR SC 3353; M/s SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. and others, 2019(2) RCR (Civil) 249 (SC); Kailash v. Nakhu and others, 2005 AIR SC 2441; Paramjit Singh and another v. Surjit Singh and another, 2014(62) RCR (Civil) 784; Swarn Ram and others v. Jaimal Ram, 2010(5) RCR (Civil) 652; Malayalam Plantations Ltd. v. State of Kerala and another, 2010(13) SCC 487; Pritam Singh v. Avtar Singh, 2010(9) RCR (Civil) 912; Union of India v. Ibrahim Uddin and another, 2012(8) SCC 148.

33. Per contra, Mr. Sanjay Kaushal, learned Senior counsel representing the Miller, submitted that the Miller has suffered on account



high-handedness of the Procurement Agency. He submitted that the order of the coordinate Bench, vide which the revision petition against the striking off the defence was dismissed, has attained finality, as the Hon'ble Supreme Court did not interfere in the matter. It was further submitted that the liberty granted to the Procurement Agency was to raise all pleadings on the merits in appeal and not to challenge the order vide which the defence was struck off.

34. Learned Senior counsel also referred to the sequence of events. Reference was made to the interlocutory orders passed by the trial Court, the orders passed by the coordinate Bench in the revision petition as well as the review application, the orders passed by the Hon'ble Supreme Court of India and various orders passed in the writ petitions etc. Learned counsel submitted that if the sequence of events is considered, it becomes manifestly clear that the defence of the Procurement Agency was rightly struck off. In support of his contentions, reliance was placed upon the decisions of the Hon'ble Supreme Court rendered in Hope Plantations Ltd. v. Taluk Land Board, 1999(5) SCC 590; C.V. Rajendran v. N.M. Muhammed Kunhi, 2002(7) SCC 447; T.P.Moideen Koya v. Govt. of Kerala, 2004(8) SCC 106; Nazir Mohamed v. J. Kamala, 2020 SCC Online SC 676; Mahavir Singh v. Naresh Chandra, 2001(1) SCC 309; Desh Raj v. Balkishan, 2020(2) SCC 708; Atcom Technologies Ltd. v. Y.A. Chunawala & Co., 2018(6) SCC 639.

ANALYSIS AND FINDINGS

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



36. Before advertng to the merits of the case, it would be apposite to refer to the statutory provisions. Section 8 of the 1996 Act lays down as under:-

“8. Power to refer parties to arbitration where there is an arbitration agreement.—1 [(1)A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.]

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.]



(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

7. Order VIII Rule 1 of CPC reads as under:-

“Written statement, set-off and counter-claim

1. 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.]

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[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.]”



38. A perusal of Section 8 of the 1996 Act shows that the application has to be filed before the submission of the first statement on the substance of the dispute.

39. Now lets have a look at the law on the subject.

40. The very language of Section 8 of the 1996 Act shows that an application under Section 8 has to be filed before submitting the first statement on the substance of the dispute. In the case of **Rashtriya Ispat Nigam Limited and another v. M/s Verma Transport Company, 2006(7) SCC 275**, the Hon'ble Supreme Court of India was examining as to whether filing of reply to the injunction application could be said to be filing of a statement on the substance of the dispute. In that case, a contract was entered into between M/s Rashtriya Ispat Nigam Limited, which was a Public Sector Undertaking, engaged, *inter alia*, in the business of manufacturing and marketing of iron and steel products, and M/s Verma Transport company, which was a partnership firm engaged in the business of consignment agents. A contract was entered into between the parties, whereafter a dispute arose leading to the filing of a civil suit by the firm. Rashtriya Ispat Nigam Ltd. filed an application under Section 8 of the 1996 Act. An objection was raised that since a reply to the application for injunction had been filed, the application did not lie. The said contention was rejected by the Hon'ble Supreme Court of India holding that filing of the reply to the injunction application could not be taken up the submission of a statement on the substance of the dispute. It was held that the expression "first statement on the substance of the dispute" contained in Section 8(1) of the 1996 Act must



be contra-distinguished with the expression “written statement”. It was also held that the words employed amounted to a submission by the party to the jurisdiction of the judicial authority. It was ultimately held that the application filed by Rashtriya Ispat Nigam Ltd. was maintainable. Applying the ratio of the said judgment, this Court holds that the first appellate Court erroneously held that even though an application under Section 8 of the 1996 Act had been filed, there was no bar to file a written statement. On the contrary, the settled position of law is that under such circumstances, a written statement could not have been filed.

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 I 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.



43. Reverting to the facts of the case, the suit came up for hearing for the first time before the trial Court on 10.09.2018. Notice was issued to the defendants for 25.10.2018. On 25.10.2018, the defendants put in appearance. The case was adjourned to 26.11.2018 for filing of written statement. For, the written statement was not filed, the matter was again adjourned to 04.02.2019 for filing of written statement. On 04.02.2019, an application under Section 8 of the 1996 Act was filed, and the matter was adjourned to 11.03.2019 for filing of reply. Reply was duly filed on 11.03.2019 and the matter was adjourned to 19.03.2019. On the said date, the application under Section 8 of the 1996 Act was dismissed.

44. Meanwhile, an application under Order VIII Rule 1 CPC was moved by the Miller for striking off the defence. The said application, after having been considered for a few dates, was allowed vide order dated 24.04.2019 and relying upon the judgment of the Hon'ble Supreme Court of India in the case of *M/s SCG Contracts Pvt. Ltd. (supra)*, the defence of the Procurement Agency was struck off.

45. In the considered opinion of this Court, the trial Court erred in doing so, as the judgment in the case of *M/s SCG Contracts Pvt. Ltd. (supra)* applies only to commercial disputes and not to non-commercial disputes.

46. The revision petition (CR-3408-2019) was also dismissed by the coordinate Bench while relying upon a decision rendered by the Hon'ble Supreme Court in *M/s SCG Contracts Pvt. Ltd. (supra)*, so was the review application. By the time, the matter reached the Hon'ble Supreme Court, the



suit had been decided. Under the circumstances, the Hon'ble Supreme Court held as under [SLP(C)-22872-2019]:-

“In view of trial court having passed the decree on 29.07.2019, the petitioner has remedy of filing an appeal against the said order. All questions raised before this Court shall be open to be raised in appeal, if filed. With the aforesaid observations, this special leave petition shall stand disposed of.

Pending application(s) shall stand disposed of.”

47. The Procurement Agency placed a copy of the SLP on record of the first appellate Court and addressed arguments on the issue of striking off the defence, but the same were rejected by the first appellate Court:

“13. As far as the arguments of learned counsel for appellants regarding the striking off their defence are concerned, a perusal of record transpires that suit was filed by the respondent on 10/09/2018 and the learned lower court issued summons to the present appellants for 25/10/2018. The summons were served to appellant No.1 on 28/09/2018, appellant No.2 on 13/09/2018 and appellant No.3 on 11/10/2018. The aforesaid appellants appeared before the learned lower court on 25/10/2018 till 04/02/2019, they did not file any written statement. The appellants No.1 and 2 filed an application under section 8 of Arbitration and Conciliation Act on 04/02/2019 but they did not file any written statement. The appellants failed to file written statement within the statutory period. The mere filing of an application under section 8 of Arbitration and Conciliation Act was not an excuse



for the appellants for not filing written statement within the prescribed time. The appellants were required to remain vigilant with regard to their legal right to file written statement before the expiry of the statutory period and they can not be allowed to take benefit of their own lapses. In these circumstances, this court is of the considered opinion that learned lower court has rightly struck off the defence of the appellants vide order dated 24/04/2019.”

48. It is, therefore, clear that the Courts did not examine the matter from the correct perspective and non-suited the Procurement Agency by wrongly relying upon a judgment that applies only to commercial disputes.

49. No doubt, the written statement was not filed in time. However, the dates referred to in the preceding paragraph show that the trial Court itself adjourned the matter from 26.11.2018 to 04.09.2019 for filing of written statement when an application under Section 8 of the 1996 Act was pending. The Procurement Agency can, therefore, be said to have been remiss from the time of its service till February, 2019. However, the period was not too long and the delay was not inordinate. Therefore, defence of the Procurement Agency should not have been struck off. The Courts should have considered that there was no deliberate attempt on the part of the Procurement Agency to delay the matter. The Courts should also have taken into consideration that the matter relates to public money. The Courts chose to decide the suit *ex parte* without keeping in mind that matters should normally be decided on merits and that parties should not be non-suited on mere technicalities.



50. The arguments raised by learned Senior counsel for the Miller that the Hon'ble Supreme Court of India had not permitted the Procurement Agency to raise the issue of striking of the defence, is devoid of merit, as the order of the Hon'ble Supreme Court is very clear.

51. Another argument, which was raised during the course of arguments by learned Senior counsel representing the Procurement Agency, is that if the matter is now remitted for the trial, the Miller will suffer a huge loss, as it has been in litigation with the Procurement Agency for the last almost one decade. It was submitted that in case, this Court arrives at a conclusion that defence should not have been struck off, the Court may consider allowing the application for additional evidence instead of remitting the matter.

52. The argument, howsoever attractive it may sound, is devoid of merit. Even if this Court allows the application for additional evidence, it has to be borne in mind that there are no pleadings on behalf of the Procurement Agency, and no evidence can be considered in the absence of pleadings.

53. I have considered the judgments relied upon by both sides. In view of the categorical decisions of the Hon'ble Supreme Court render in the cases of *Deshraj v. Balkishan (supra)* and *Rashtriya Ispat Nigam Limited v. M/s Verma Transport Company (supra)*, the other judgments would be of no consequence insofar as the present dispute is concerned.

54. In view of the aforementioned facts and circumstances, RSA-305-2021 is allowed, whereas RSA-199-2021 is dismissed. The impugned judgments and decrees are set aside. Consequently, CR-4288-2019 stands



disposed of and the order dated 29.04.2019, vide which the defence of the Procurement Agency was struck off, is set aside.

55. Accordingly, the matter is remitted to the trial Court for a fresh decision, after giving an opportunity to the defendants to file their written statements and thereafter proceed in accordance with law.

56. Since after the filing of the suit, almost a decade has already elapsed, the trial Court is requested to make efforts to decide the suit within a period of one year.

57. Pending application(s), if any, also stands disposed of.

(VIKRAM AGGARWAL)
JUDGE

October 28, 2025
Rajan

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes