



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

119

CR-2179-2021

Date of decision: 20.02.2025

M/S RAJINDER EARTHMOVER STATION PRIVATE LIMITED
AND ANR

..Petitioners

Versus

A2Z WASTE MANAGMENT (LUDHIANA) LIMITED AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.P. Soi, Advocate
for the petitioners.

Mr. Kunal Dawar, Advocate
Ms. Shruti Mandhotra, Advocate
for respondent No.1, 2, 4 and 5.

ANIL KSHETARPAL, J(Oral)

1. Pursuant to order dated 15.02.2025, learned counsel for the parties have informed the Court that the civil suit pending before the Commercial Court is now at the stage of final arguments. The petitioners (plaintiffs) pray for striking off defendants' defence on account of their failure to file written statement within a period of 120 days.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

3. The petitioners filed a suit for recovery of Rs.5,50,60,000/- on 09.09.2016 before the Civil Court, which was transferred to the Commercial Court on 28.11.2016. Thereafter, the case was adjourned to 05.12.2016 and then to 20.12.2016. From 20.12.2016, it was adjourned to 16.01.2017, 02.02.2017, 16.02.2017, 04.03.2017, 20.03.2017, 01.04.2017. On 01.04.2017, the defendants filed application u/s 8 of the Arbitration and



Conciliation Act, 1996, for referring the matter to the arbitrator as per the contract, which was allowed on 31.07.2017. However, the plaintiff's CR-8078-2017 was allowed on 18.03.2019 while directing the Commercial Court to proceed with the matter. On 25.04.2019, the plaintiff filed an application for reviving the suit, which was allowed while reviving the suit on 13.08.2021. The petitioners filed application for striking off defendants defence on 29.11.2019, which was dismissed on 13.08.2021 because defendants filed their written statement within one month from 13.08.2021 i.e. on 10.09.2021. Thereafter, the issues were framed and the parties have already concluded their evidence. The case is now fixed for final disposal.

4. Learned counsel for the petitioners submits that the Court is bound to strike off the defence, hence, at this stage, the Court should order that the written statement filed by defendants and the evidence led by them should not be taken into consideration while deciding the suit because provision is mandatory. He relied upon the judgment passed in **M/s SCG Contract India Pvt.Ltd. Vs. K.s. Chamankar Infrastructure Pvt. Ltd. and others, 2019 (2) RCR (Civil) 249.**

5. On the other hand, learned counsel for the respondents relies upon the judgment passed in **Raj Process Equipments and Systems Pvt. Ltd. and others Vs. Honest Derivatives Pvt. Ltd. 2022 SCC (Online) SC 1877,** to contend that now at this stage, it would be unjust to delete or omit from the record the defendants written statement and evidence led by them. He further submits that the written statement has been filed within a period of less than one month from the date, the suit was revived.

6. This Court has considered the submissions of learned counsel for the parties.



7. Failure to file written statement is a default, which is curable if sufficient cause is shown. Now, at this stage, when the suit is at the stage of final arguments, it will be highly unjust to strike off the defendants defence after they have already filed their pleadings and led evidence.

8. The procedural law cannot be permitted to override the substantive justice. The rules or procedures are handmaids of justice. Moreover, the suit was revived only on 13.08.2021. The judgment passed in **M/s SCG Contract India Pvt. Ltd. case (supra)** has been explained in **Raj Process Equipments and Systems Pvt. Ltd. case (supra)**. Moreover, in this case also, the suit was filed before the ordinary Civil Court, which was transferred to the Commercial Court.

9. Hence, the present petition is dismissed.

10. All the pending miscellaneous applications, if any, are also disposed of.

February 20th, 2025

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(ANIL KSHETARPAL)
JUDGE

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