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

CR-5465-2024 (O&M)

Date of Decision : 27.11.2025

Kashmir Singh & Anr

... Petitioner(s)

Versus

Balbir Singh

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vikas Gupta, Advocate for the petitioner.

None for the respondent despite service.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 12.02.2024 (Annexure P-1) whereby the defense of the defendant-petitioners has been struck off for not filing the written statement.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for possession by way of specific performance of an agreement to sell dated 14.12.2022 in respect of land measuring 01 kanal 06 marlas fully described in the plaint. The defendant-petitioners did not file their written statement and on 18.12.2023 the case was adjourned to 18.01.2024 for filing of the written statement subject to payment of ₹500/- as costs. On 18.01.2024 the order passed was “ *Cost not paid. Written statement not filed. Be filed on 12.02.2024* ”. On 12.02.2024 the following order was passed :

“ Inadvertently omitted by Steno that written statement not filed. Cost not paid. Hence, in the last date of hearing, defence of defendant for filing written statement is struck off. She is warned to be careful in future. Written statement filed by defendant, could not be taken on record as defence already struck off. For entire evidence of the plaintiff, case stands adjourned to 18.03.2024.”

Hence, the present revision petition by the defendant-petitioners.

3. Learned counsel for the defendant-petitioners has relied upon the judgment of the Hon’ble Supreme Court in the case of **Desh Raj Vs. Balkishan (D) through proposed LR Ms. Rohini [(2020) RCR (Civil) 807]** to contend that the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 have been held to be directory in nature in the case of non-commercial suits. Learned counsel would further contend that given one opportunity, the defendant-petitioners would file their written statement on the next date of hearing before the Trial Court i.e. 03.12.2025. Infact, the written statement was filed on 12.02.2024, however, the same was not taken on the record. It is further the contention of the learned counsel that even costs were paid on the said date.

4. None had put in appearance on behalf of the respondent despite service on 05.03.2025 and even on 25.07.2025. Today also none has put in appearance on behalf of the respondent.

5. I have heard learned counsel for the defendant-petitioners.

6. In the present case on 18.01.2024 the order passed by the Trial Court reads as under :

“ Cost not paid. Written statement not filed. Be filed on 12.02.2024”

In the impugned order dated 12.02.2024 it is stated that inadvertently it was omitted by the Steno that written statement not filed. Cost not paid. Hence, in the last date of hearing, defence of defendant for filing written statement is struck off. Thereafter, it was stated that written statement filed by the defendant could not be taken on record as defence was already struck off and the matter was fixed for the evidence of the plaintiff. The order dated 18.01.2024 nowhere talks about the defense being struck off and strangely vide the impugned order dated 12.02.2024 the Court has stated that defense stands struck off on the previous date on the ground that the Steno had made a mistake. The order dated 18.01.2024 must have been signed by the Officer. Once the order was signed and there was no mention of the defence having being struck off, it is not understandable as to how an order could be passed relating to the previous date. On 18.01.2024 the order only stated that cost not paid and written statement not filed and the same be filed on 12.02.2024. On 12.02.2024 the written statement was filed and costs were also paid, however, the written statement was not taken on record stating that the defense already stood struck off. The order is unsustainable in law. No orders can be passed relating to a previous date adding something which was not stated in the order on the ground that the Steno had omitted to write something.

7. Hon'ble Supreme Court in the case of **Desh Raj** (supra) has held 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 noncommercial 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 time-line 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.”

8. In view of the above and keeping in view the nature of the litigation and the fact that irreparable loss would be caused to the defendant-petitioners in case they are not permitted to file their written statement and in order to impart complete justice between the parties, one opportunity is granted to the defendant-petitioners to file their written statement on the next date of hearing before the Trial Court i.e. 03.12.2025.

9. In view of the above, the present revision petition stands allowed and the impugned order dated 12.02.2024 stands set aside. Pending applications, if any, also stand disposed off.

10. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

27.11.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO