

2025:PHHC:001822



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

121

CR-7730-2023 (O&M)

Date of Decision : 09.01.2025

M/s SUNNY FOOTWEAR AND ANR

.... Petitioners

VERSUS

ROHIT VERMA

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashish Kumar, Advocate for
Mr. Saurav Gumbal, Advocate for the petitioners.

Ms. Amrita Nagpal, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

CM-22474-CII-2024

1. This is an application for preponing the date of hearing of the main petition from 30.04.2025 to some early date.
2. Learned counsel for the non-applicant/respondent states that she has no objection if the present application is allowed.
3. In view of the above, the present application is allowed and the date of hearing of the main case is preponed. With the counsel of learned counsel for the parties, the main case is taken on Board today itself.

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4. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 20.01.2023 (Annexure P-6) passed by the learned Civil Judge (Junior Division), Chandigarh vide which the defendant-petitioners herein had been barred

from filing written statement and their defence was struck off for not filing the written statement within a period of 90 days.

5. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a civil suit for recovery of ₹20,00,000 (rupees twenty lakh) as principal amount alleged to have been advanced to defendant-petitioner No.2 along with interest @ 18% per annum. Despite numerous opportunities, the defendant-petitioners failed to file their written statement and eventually their defence was struck off vide impugned order dated 20.01.2023.

6. Learned counsel for the defendant-petitioners would contend that given one opportunity, the defendant-petitioners would file their written statement and that the defendant-petitioners are also willing to compensate the plaintiff-respondent by way of costs.

7. *Per contra*, learned counsel for plaintiff-respondent has vehemently contended that sufficient opportunities have already been granted to the defendant-petitioners for filing written statement and hence no fault can be found with the impugned order. It is further the contention that these are only delaying tactics which are being adopted by the defendant-petitioners. Learned counsel has relied upon an order dated 16.07.2024 passed by a Coordinate Bench of this Court in **CR-3800-2024 [Rajinder Prasad Yadav V/s Bhagwan Dass]** to contend that once sufficient opportunities are given for filing written statement, no further opportunity ought to have been granted for the same.

8 Heard.

9. It is trite that the provisions of Order VIII Rule 1 CPC have been held to be directory in nature and not mandatory. The Hon'ble Supreme Court in the case of **Desh Raj vs. Balkishan (D) through proposed LR Ms. Rohini [(2020) RCR (Civil) 807]** 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.”

10. In the present case no doubt that the defendant-petitioners have been remiss in filing their written statement. However, keeping in view the law laid down by the Hon’ble Supreme Court in **Desh Raj’s** case (supra) that the provisions of Order VIII Rule 1 CPC have been held to be directory in nature and not mandatory, this Court deems it fit to grant one opportunity to the defendant-petitioners to file written statement.

11. The order relied upon by the learned counsel for the plaintiff-respondent in the case of **Rajinder Prasad Yadav’s** (supra) is distinguishable on facts and hence the same would not come to the aid of the plaintiff-respondent.

12. In view of the above, one opportunity is granted to the defendant-petitioners to file their written statement within a period of 15 days from today subject to payment of ₹30,000 (rupees thirty thousand) as costs to be paid to the plaintiff-respondent. The payment of costs shall be a condition precedent for filing of the written statement.

13. It is made clear that in case the written statement is not filed within a period of 15 days from today, the present revision petition shall be deemed to having been dismissed. The Trial Court is requested not grant any unnecessary adjournments to either of the parties.

14. Petition stands disposed off in the above terms. Pending applications, if any, also stand disposed off.

09.01.2025

Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No