

**HIGH COURT OF PUNJAB AND HARYANA****Bench: Hon'ble Mrs. Justice Alka Sarin****Date of Decision: 22.03.2024**

Case No: CR-1616-2024 (O&amp;M)

**Harshanjit Singh (Since Deceased) Through His LRS ..... Petitioner****Versus****Satpal ..... Respondent****Legislation:**

Order VIII Rule 1 of the Code of Civil Procedure (CPC), 1908

Commercial Courts Act, 2015

**Subject:** Revision petition against the order of the Civil Judge (Junior Division), Ferozepur, striking off the defense of the defendant-petitioners for non-filing of the written statement in a non-commercial suit.**Headnotes:**

Revision against Order Striking off Defence for Non-filing of Written Statement – Challenge against order dated 04.03.2024 striking off defendant-petitioners' defence in civil suit for failing to file written statement within prescribed time – Revision petition in High Court. [Para 2]

Contention and Counter-Contention – Petitioners seek opportunity to file written statement, willing to compensate with costs – Respondent contends sufficient opportunities already provided, defence rightly struck off for delay. [Para 3-4]

Relevant Legal Principles and Precedents – Referencing *Desh Raj vs. Balkishan (D)* through proposed LR Ms. Rohini [(2020) RCR (Civil) 807], distinguishing between timelines for filing written statement in commercial and non-commercial disputes – Unamended Order VIII Rule 1 CPC deemed directory, not mandatory for non-commercial suits. [Para 6]

Decision and Directions – High Court allows one more opportunity to file written statement by 28.03.2024, subject to Rs.30,000/- costs to respondent – Payment of costs as condition precedent for filing written statement – Counsel for defendant-petitioners advised against unnecessary adjournments. [Para 7]

Disposition – Petition disposed of with directions for filing written statement and payment of costs – Pending applications, if any, also disposed of. [Para 8]

**Referred Cases:**

- Desh Raj vs. Balkishan (D) through proposed LR Ms. Rohini [(2020) RCR (Civil) 807]
- SCG Contracts India Pvt. Ltd. v. KS Chamankar Infrastructure Pvt. Ltd., AIR 2019 SC 2691
- Atcom Technologies Ltd. v. Y.A. Chunawala and Co., (2018) 6 SCC 639

Representing Advocates:

Petitioners: Mr. Puneet Kumar Bansal, Advocate

Respondent: Mr. Rahul Arora, Advocate

ALKA SARIN, J. (ORAL)

1. Mr. Rahul Arora, Advocate has appeared and has filed his vakalatnama on behalf of the respondent. The same is taken on record.

2. Challenge in the present revision petition is to the order dated 04.03.2024 (Annexure P-5) passed by the learned Civil Judge (Junior Division), Ferozepur whereby the defence of the defendant-petitioners was struck off for non-filing of the written statement.

3. Learned counsel for the defendant-petitioners has contended 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.

4. Per contra, learned counsel for the plaintiff-respondent would contend that sufficient opportunities were granted to the defendant-petitioners, however, they failed to file their written statement despite a period of 90 days having elapsed and hence their defence was rightly struck off.

5. Heard.

6. In the present case the prayer made by the defendant-petitioners is that they may be permitted to file written statement as their defence has been struck off vide order dated 04.03.2024 (Annexure P-5). 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.”

7. Since the provisions of Order 8 Rule 1 CPC have been held to be directory in nature and not mandatory in the case of non-commercial suit, this Court deems it fit to grant one opportunity to the defendant-petitioners to file their written statement on or before the date fixed before the Trial Court i.e. 28.03.2024 subject to payment of Rs.30,000/- as costs to be paid to the plaintiff-respondent. The payment of costs shall be a condition precedent for filing of the written statement. Learned counsel for the defendant-petitioners has assured this Court that the counsel representing the defendant-petitioners before the Court below would not take any unnecessary adjournments.

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

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