

2025:PHHC:083225



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

201

CR-1246-2020 (O&M)

Date of Decision : 10.07.2025

PAWAN KUMAR

... Petitioner

VERSUS

SURENDER KUMAR MEHTA

... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Lajpat Rai Sharma, Advocate for
Mr. Vivek Khatri, 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 order dated 28.01.2020 (Annexure P-3) passed by the learned Civil Judge (Junior Division), Hisar whereby the defence of the defendant-petitioner was struck off for not filing his written statement despite opportunities having been granted.

2. Notice was issued to the respondent in the present case on 20.02.2020. However, the respondent has chosen not to put in appearance despite service and, accordingly, he is proceeded against *ex parte*.

3. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for recovery of ₹40,000 (rupees forty thousand) along with interest @ 18% per annum from the date of due payment till its realization. The defendant-petitioner herein put in appearance before the Court on 18.11.2019 for the first time. Thereafter on

18.12.2019 the matter was adjourned to 04.01.2020. On 04.01.2020 last opportunity was granted for filing written statement. On 28.01.2020 defence of the defendant-petitioner was struck off for not filing written statement.

4. Learned counsel for the defendant-petitioner would contend that given one opportunity, the defendant-petitioner would file his written statement and that the defendant-petitioner is also willing to compensate the plaintiff-respondent by way of costs. Learned counsel has relied upon the judgment 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 CPC have been held to be directory in nature and not mandatory in non-commercial suit(s).

5 Heard.

6. In the present case the defence of the defendant-petitioner had been struck off for not filing his written statement. The 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.”

7. No doubt that the defendant-petitioner has been remiss in filing his written statement. However, keeping in view the fact that the suit is for recovery, injustice would be occasioned to the defendant-petitioner if he is not granted one opportunity to file his written statement.

8. In view of the above, the present revision petition is allowed, and the impugned order is set aside. One opportunity is granted to the defendant-petitioner to file his written statement on or before the date fixed in the Trial Court i.e. **21.07.2025** subject to payment of ₹10,000 (rupees ten 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.

9. It is made clear that in case the written statement is not filed on or before 21.07.2025, the present revision petition shall be deemed to having been dismissed. The Trial Court is requested not to grant any unnecessary adjournments to either of the parties.

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

10.07.2025
Aman Jain

(ALKA SARIN)
JUDGE

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