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DESH RAJ

v.

BALKISHAN (D) THROUGH PROPOSED LR MS. ROHINI  
(Civil Appeal No. 433 of 2020)

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JANUARY 20, 2020

**[S. A. BOBDE, CJI, B.R. GAVAI AND SURYA KANT, JJ.]**

*Code of Civil Procedure, 1908 – Or. VIII, r. 1 – Timeline for filing written statement in non-commercial disputes – Agreement to sell entered on 17.03.2017 between the appellant and the respondent, who are brothers, for sale of one floor of the ancestral property for Rs. 7.5 lakhs – Rs.1 lakh paid as earnest money to the appellant – Agreement not honoured – Respondent filed suit inter alia for specific performance – Appellant’s opportunity of filing written statement was closed and defence struck off owing to repeated delays and non-adherence of deadlines – High Court summarily dismissed the petition relying upon its order in one Oku Tech case which was rendered in the context of a commercial dispute qua Or.VIII, r.1 as amended by the Commercial Courts Act, 2015 – Held: Counsel for the respondent has not contested the non-commercial nature of the dispute – Dispute does not fall within the parameters specified u/s.2(c) of the 2015 Act and in particular sub-clause (vii), as the immovable property here is not of a nature which is “used exclusively in trade or commerce”– High Court overlooked the nature of the dispute and mistakenly applied the ratio of a case rendered in light of modified version of the CPC applicable only to commercial disputes – Further, numerous opportunities were accorded to the appellant – He was served on 01.05.2017 – It was only on 02.11.2017, after delay of 95 days post the maximum extendable period under the Proviso of Or. VIII, r.1 that the appellant claimed to have filed his written statement – Only defence taken to the repeated and blatant lapses is that the appellant’s counsel was not turning up – Appellant is seeking condonation in a casual manner – This ought not to be permitted or encouraged – Although the unamended Or.VIII, r.1 is directory, it cannot be interpreted to bestow free hand to any litigant/lawyer to file written statement at their own sweet-will– Legislative*

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*objective behind prescription of timelines under the CPC must be given due weightage so that disputes are resolved in time-bound manner – Appellant failed to give or even attempt to proffer any cogent reason for the delay, though he is right that the High Court erroneously relied upon the ratio of Oku Tech – Lenient view taken in the unique circumstances of the case – Discretion exercised not a precedent – Written statement filed by the appellant on 02.11.2017 (as claimed), be taken on record with a copy to counsel for the respondent within one week from today, subject to payment of costs of Rs.25,000/- to the respondent – Orders of the courts below set aside – Commercial Courts Act, 2015 – ss.2(c) and 16.*

*Commercial Courts Act, 2015 – ss.2(c) and 16 – Amendment of CPC in its application to commercial disputes – Held: Post coming into force of the said Act, there are two regimes of civil procedure wherein commercial disputes [as defined u/s.2(c) of the said Act] are governed by the CPC as amended by s.16 of the said Act; all other non-commercial disputes fall within the ambit of the unamended/original provisions of CPC – Code of Civil Procedure, 1908 – Or. VIII, r. 1.*

**Disposing of the appeal, the Court**

**HELD: 1.1 The Commercial Courts Act, 2015 through Section 16 has amended the CPC in its application to commercial disputes. 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 non-commercial disputes fall within the ambit of the unamended (or original) provisions of CPC. Counsel for respondent has not contested the non-commercial nature of the dispute, and even independently the Court is satisfied that the dispute does not fall within the parameters specified under Section 2(c) of the Commercial Courts Act, 2015 and in particular sub-clause (vii), as the immovable property here is not of a nature which is “used exclusively in trade or commerce”. Hence, the appellant is correct in contending that the High Court overlooked the nature of the dispute and mistakenly applied the ratio of a case rendered in**

- A light of a modified version of the Code of Civil Procedure, which would only be applicable to commercial disputes. [Paras 11, 12 & 14] [20-D-E; 21-A-B; 21-E-H]

*Atcom Technologies Ltd. v. Y.A. Chunawala and Co.*  
(2018) 6 SCC 639 – relied on.

- B 1.2 Although the unamended Order VIII Rule 1 of CPC is directory, it cannot be interpreted to bestow a free hand on any litigant or lawyer to file written statement at their own sweet-will and/or to prolong the lis. The legislative objective behind prescription of timelines under the CPC must be given due weightage so that the disputes are resolved in a time-bound manner. Inherent discretion of Courts, like the ability to condone delays under Order VIII Rule 1 is a fairly defined concept and its contours have been shaped through judicial decisions over the ages. Illustratively, extreme hardship or delays occurring due to factors beyond control of parties despite proactive diligence, may be just and equitable instances for condonation of delay. Numerous opportunities had been accorded to the appellant. He was served on 01.05.2017 and entered appearance through counsel on 15.05.2017. As per Order VIII Rule I of CPC, the appellant ideally ought to have filed his written statement by 31.05.2017; and at the very latest by 30.07.2017. In addition to two separate deadlines for filing of the written statement within the 90-day timeframe prescribed by the ‘original’ Order VIII Rule 1, the Civil Court even post expiry of the 90-day period again gave one last and final opportunity on 18.09.2017 subject to payment of costs of Rs 3,000. None of these deadlines were complied with. Even on 11.10.2017, when the Court finally closed the appellant’s ability to file written statement and struck-off his defence from the record, no attempt was made to comply with the process of law. It was only on 02.11.2017, after a delay of 95 days post the maximum extendable period under the Proviso of Order VIII Rule 1, CPC that the appellant claimed to have filed his written statement. Curiously however, even by the next hearing on 03.11.2017, the appellant had failed to provide a copy of the written statement to the respondent as had been noted by the Civil Court. [Paras 16-18] [22-A-G]
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1.3 The only defence taken to these repeated and blatant lapses is that the appellant's counsel was not turning up. No attempt has been made to even proffer a reasoned justification or explanation, and it is clear that appellant is seeking condonation in a casual manner. This ought not to be permitted or encouraged. Nothing prevented the appellant from filing the written statement through counsel or in person. He has, thus, failed to give any cogent reason for the delay and is unable to satisfy due diligence on his part though he is right in his submission that the High Court erroneously relied upon the ratio of *Oku Tech*. Having held so, there could be no escape but to dismiss this appeal. However, taking a lenient view given the unique circumstances of the case, and without laying down the discretion being exercised hereinafter, as a precedent, it is directed that the written statement filed by the appellant on 02.11.2017 (as claimed), be taken on record with a copy to counsel for the respondent within one week from today and further subject to payment of costs of Rs. 25,000/- to the respondent. The orders of the courts below are thus set aside and the appeal is disposed of in the above terms. [Paras 19, 21, 23] [22-G-H; 23-A-E]

*Oku Tech Pvt Ltd v. Sangeet Agarwal and Others*  
(2016) SCC OnLine Del 6601; *Salem Advocate Bar Association, T.N. v. Union of India* (2005) 6 SCC 344 : [2005] 1 Suppl. SCR 929; *M/s SCG Contracts India Pvt. Ltd. v. KS Chamankar Infrastructure Pvt. Ltd. & Ors.* AIR 2019 SC 2691 – referred to.

Case Law Reference

[2005] 1 Suppl. SCR 929	referred to	Para 8
AIR 2019 SC 2691	referred to	Para 13
(2018) 6 SCC 639	relied on	Para 14

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 433 of 2020.

From the Judgment and Order dated 26.11.2018 of the High Court of Delhi at New Delhi in CM(M) No. 1370 of 2018.

Anilendra Pandey, Adv. for the Appellant.

Ms. Aparna Jha, Adv. for the Respondent.

A The following Judgment of the Court was delivered:

**JUDGMENT**

1. Leave granted.

B 2. This Civil Appeal is directed against order dated 26.11.2018 passed by the Delhi High Court whereby appellant's revision petition against the order of the Civil Court which closed his right to file written statement under Order VIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter "CPC") and struck-off his defence owing to repeated delays and non-adherence of prescribed deadlines, has been dismissed.

C ***FACTS***

3. The appellant and the respondent are brothers and own one floor each of ancestral property bearing No. 142 in Devli Village, Delhi. The ground floor was possessed and owned by the respondent, whereas the first floor was in the name of the appellant.

D 4. It has been claimed that in February 2017, the respondent approached the appellant offering to purchase the first floor of the ancestral property. Subsequently, an agreement to sell was entered into between the parties on 17.03.2017 for total consideration of Rs 7.5 lakhs, of which an amount of Rs 1 lakh was paid as earnest money to the appellant. This agreement was subsequently not honoured and a legal notice was served upon the appellant by the respondent on 13.04.2017, calling upon him to accept consideration and perform his part of the contract.

E 5. Claiming that the appellant was attempting to sell the suit property to third parties, the respondent later approached the Civil Court praying for a decree of specific performance of the agreement to sell dated 17.03.2017 by directing the appellant to receive the balance sale consideration and execute/register the sale deed in favour of the respondent. Additionally, the respondent sought to permanently injunct the appellant from alienating the property in favour of any third party.

G Alternatively, recovery of damages of Rs 2 lakhs with pendent lite and future interest @ 18% per annum was sought by the respondent.

H 6. The appellant was served on 01.05.2017, and he appeared through counsel on 15.05.2017 wherein the Civil Court granted the appellant 30 days to file his written statement. On 17.07.2017, noting that no written statement had been filed till then, the Court granted the

appellant a final opportunity of two weeks to file his written statement. On 18.09.2017, the Court observed that despite the last opportunity having been accorded more than two months ago, no written statement had been filed. Nevertheless, the Court granted another final opportunity, subject to payment of Rs 3,000 costs and the matter was posted for 11.10.2017. On this date, appellant sought multiple pass overs but his Counsel did not appear before the Court. After noticing that despite several opportunities (including one beyond the maximum period of 90 days) the appellant had failed to file any written statement or deposit costs and that the matter could not be adjourned repeatedly, the Civil Court thus closed the appellant's opportunity of filing written statement and struck off his defence. Even on the next hearing on 03.11.2017, the appellant's Counsel did not appear or supply a copy of the written statement to the respondent, as noted in the Trial Court's daily order.

7. The aggrieved appellant approached the High Court in revision, which noted how he had been granted repeated opportunities and yet the written statement was not filed within 120 days of notice. Relying upon the order of its co-ordinate bench in *Oku Tech Pvt Ltd v. Sangeet Agarwal and Others*<sup>1</sup> wherein it was held that there was no discretion with courts to extend the time for filing the written statement beyond 120 days after service of summons, the Delhi High Court summarily dismissed the petition.

#### **CONTENTIONS OF PARTIES**

8. The appellant's primary contention is that the reliance on *Oku Tech (supra)* was erroneous as it was rendered in light of Order VIII Rule 1 of CPC as amended by the Commercial Courts Act, 2015 which in turn was applicable to commercial disputes only. The present matter was highlighted as being non-commercial, and it was urged that the un-amended Order VIII Rule 1 of CPC would be applicable, wherein no consequences for not complying with the shorter timeline of 90 days has been provided. This provision, it was contended, was merely procedural and concomitantly directory as held by this Court in various decisions including *Salem Advocate Bar Association, T.N. v. Union of India*<sup>2</sup>.

9. Given this, the appellant put forth his contention that the deadline of 90 days could be relaxed keeping in view the facts and

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<sup>1</sup> 2016 SCC OnLine Del 6601.

<sup>2</sup> (2005) 6 SCC 344.

- A circumstances of a case; and argued that he himself had personally appeared on all dates of hearing and the lapse was on the part of his Counsel, due to which written statement could not be filed. The appellant claims that severe prejudice would be caused to him if the delay is not condoned for he would be left defenceless in the civil suit. He accordingly seeks that this Court invoke its inherent discretion under
- B Order VIII Rule 1 of CPC and grant one final opportunity to file his written statement.

10. This was opposed on behalf of the respondent who asserted that multiple chances had already been granted to the appellant by the Civil Court, including opportunities beyond the maximum statutory period of 90 days as provided for filing of written statement under Order VIII Rule I of CPC. It was argued that continued failure to adhere to the multiple deadlines set by the Civil Court and violation of Court directions, was evidence of gross negligence on part of the appellant at best, and a deliberate delaying tactic and abuse of the process of law at the worst.

D ***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:

- E ***“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.***
- F *(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.*
- G *(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.”*
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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 non-commercial disputes fall within the ambit of the unamended (or original) provisions of CPC.

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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.*,<sup>3</sup> 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.

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14. As regard the timeline 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.*,<sup>4</sup> 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.

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15. Let us, therefore, consider whether the appellant has made out a case of exercising such discretionary jurisdiction? The present civil suit had been filed by the respondent for a decree of specific performance of an agreement to sell one floor of an ancestral property located in Devli Village, Delhi and permanent injunction against alienation of the same by petitioner to third parties. Counsel for respondent has not contested the non-commercial nature of the dispute, and even independently we are satisfied that the dispute does not fall within the parameters specified under Section 2(c) of the Commercial Courts Act, 2015 and in particular sub-clause (vii), as the immovable property here is not of a nature which is “*used exclusively in trade or commerce*”. Hence, the appellant is correct in contending that the High Court overlooked the nature of the dispute and mistakenly applied the ratio of a case rendered in light of a modified version of the Code of Civil Procedure, which would only be applicable to commercial disputes.

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<sup>3</sup> AIR 2019 SC 2691.

<sup>4</sup> (2018) 6 SCC 639.

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A        16. However, it would be gainsaid that although the unamended  
Order VIII Rule 1 of CPC is directory, it cannot be interpreted to bestow  
a free hand to on any litigant or lawyer to file written statement at their  
own sweet-will and/or to prolong the lis. The legislative objective behind  
prescription of timelines under the CPC must be given due weightage  
B        so that the disputes are resolved in a time-bound manner. Inherent  
discretion of Courts, like the ability to condone delays under Order VIII  
Rule 1 is a fairly defined concept and its contours have been shaped  
through judicial decisions over the ages. Illustratively, extreme hardship  
or delays occurring due to factors beyond control of parties despite  
proactive diligence, may be just and equitable instances for condonation  
C        of delay.

17. However, it is clear from the facts on record that numerous  
opportunities had been accorded to the appellant. He was served on  
01.05.2017 and entered appearance through counsel on 15.05.2017. As  
per Order VIII Rule I of CPC, the appellant ideally ought to have filed  
D        his written statement by 31.05.2017; and at the very latest by  
30.07.2017. In addition to two separate deadlines for filing of the written  
statement within the 90-day timeframe prescribed by the ‘original’ Order  
VIII Rule 1, the Civil Court even post expiry of the 90-day period again  
gave one last and final opportunity on 18.09.2017 subject to payment  
E        of costs of Rs 3,000. None of these deadlines were complied with. Even  
on 11.10.2017, when the Court finally closed the appellant’s ability to  
file written statement and struck-off his defence from the record, no  
attempt was made to comply with the process of law.

18. It was only on 02.11.2017, after a delay of 95 days post the  
F        maximum extendable period under the Proviso of Order VIII Rule 1,  
CPC that the appellant claimed to have filed his written statement.  
Curiously however, even by the next hearing on 03.11.2017, the appellant  
had failed to provide a copy of the written statement to the respondent  
as had been noted by the Civil Court.

G        19. The only defence taken to these repeated and blatant lapses  
is that the appellant’s counsel was not turning up. No attempt has been  
made to even proffer a reasoned justification or explanation, and it is  
clear that appellant is seeking condonation in a casual manner. This ought  
not to be permitted or encouraged. Courts must act stringently to ensure  
H        that all proceedings are decided within reasonable time, and it is but

the duty of the judicial system to cultivate a culture of respecting deadlines and time of the Court, its officers as well as of adversaries. A

20. Routine condonations and cavalier attitudes towards the process of law affects the administration of justice. It affects docket management of Courts and causes avoidable delays, cost escalations and chaos. The effect of this is borne not only by the litigants, but also commerce in the country and the public-in-general who spend decades mired in technical processes. B

21. It is obvious from the record that nothing prevented the appellant from filing the written statement through counsel or in person. He has, thus, failed to give any cogent reason for the delay and is unable to satisfy due diligence on his part though he is right in his submission that the High Court erroneously relied upon the ratio of *Oku Tech (supra)*. C

22. Having held so, there could be no escape but to dismiss this appeal. However, taking a lenient view given the unique circumstances of the case, and without laying down the discretion being exercised hereinafter, as a precedent, we direct that the written statement filed by the appellant on 02.11.2017 (as claimed), be taken on record with a copy to counsel for the respondent within one week from today and further subject to payment of costs of Rs. 25,000/- to the respondent. D E

23. The orders of the courts below are thus set aside and the appeal is disposed of in the above terms.