

## Desh Raj Vs Balkishan (D) Through Proposed Lr Ms. Rohini

**Court:** Supreme Court Of India

**Date of Decision:** Jan. 20, 2020

**Acts Referred:** Code Of Civil Procedure, 1908 " Order 8 Rule 1  
Commercial Courts Act, 2015 " Section 2(c), 16

**Citation:** AIR 2020 SC 621 : (2020) 1 JT 302 : (2020) 2 SCC 708 : (2020) 2 ALD 1 : (2020) 1 ALT 294 : (2020) 1 CTC 586 : (2020) 266 DLT 451 : (2020) 1 RCR(Civil) 807 : (2020) 1 JLJR 401 : (2020) 1 KLJ 403 : (2020) 1 KLT 440 : (2020) 1 ARC 360 : (2020) 1 CivCC 626 :

**Hon'ble Judges:** S. A. Bobde, CJ; B.R. Gavai, J; Surya Kant, J

**Bench:** Full Bench

**Advocate:** Anilendra Pandey, C.P. Singh, Suchita Dixit, Aparna Jha

**Final Decision:** Disposed Of

### Judgement

1. Leave granted.

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 nonadherence of prescribed deadlines, has been dismissed.

#### 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.

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.

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

sought by the respondent.

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 coordinate bench in *Oku Tech Pvt Ltd v. Sangeet Agarwal* and

*Others* 2016 SCC OnLine Del 6601 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 unamended 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

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-[REDACTED]

commercial 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 269 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 timeline for filing of written statement in a non- $\tilde{A}$ , 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.

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- $\tilde{A}$ , 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 $\tilde{A}$ , clause (vii), as the immovable property here is not of a nature which is  $\tilde{A}$ ç $\tilde{A}$ ,  $\tilde{A}$ “used exclusively in

trade or commerce $\tilde{A}$ ç $\tilde{A}$ ,  $\tilde{A}$ . 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.

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 $\tilde{A}$ , 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 $\tilde{A}$ , 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.

17. However, it is clear from the facts on record that numerous opportunities had been accorded to the appellant. He was served on 1.05.2017 and

entered appearance through counsel on 15.05.2017. As per Order VIII Rule 1 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<sup>th</sup> day

timeframe prescribed by the <sup>original</sup> Order VIII Rule 1, the Civil Court even post expiry of the 90<sup>th</sup> 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.

18. 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.

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 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.

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<sup>in</sup> general who spend decades mired in technical processes.

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).

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

2.11.2017 (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.

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