

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CR No. 23/2023
CM No. 4495/2023

Rama Rani

.....Appellant(s)/Petitioner(s)

Through: Ms. Mandeep Reen, Sr. Advocate with
Ms. Sanchi Gupta, Advocate

vs

Chaman Lal

..... Respondent(s)

Through: Mr. Varun Raina, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

14.07.2026

1. The petitioner, who is the defendant before the trial Court, has invoked the revisional jurisdiction of this Court to challenge order dated **26.05.2023** passed by the Court of the 3rd Additional Munsiff, JMIC, Jammu, in Civil Suit No. 2785/2022, *Chaman Lal v. Rama Rani*, whereby the petitioner's right to file the written statement was closed on the ground that the same had not been filed within the statutory period of 120 days prescribed under Order VIII Rule 1 CPC.
2. Learned counsel for the petitioner submitted that several litigations are pending between the parties. It was contended that the petitioner's mother, late Krishna Devi, had earlier instituted a suit for permanent prohibitory injunction against the respondent, titled *Krishna Devi & Anr. v. Chaman Lal & Anr.*, File No. 184/2014, before the same Court. After her mother's demise, the petitioner, a 70-year-old lady, continued to pursue the said litigation through her son-in-law, who was entrusted with monitoring the proceedings and coordinating with the counsel.

3. It was submitted that following the death of the petitioner's son-in-law, she engaged another counsel and learnt that the earlier suit had been dismissed in default on 30.10.2021. While obtaining certified copies of the record relating to the said suit, the petitioner came to know for the first time about the respondent having instituted the present suit. Consequently, she engaged counsel on 03.05.2023, filed a Vakalatnama, and sought time to file the written statement. The certified copies of the earlier suit were received on 25.05.2023, and when the matter was taken up on 26.05.2023, the petitioner's counsel again sought time for filing the written statement. However, the trial Court closed the petitioner's right to file the same despite recording the reasons for the delay.
4. It was further argued that the impugned order suffers from material irregularity and non-application of mind, as the petitioner had never been served with summons in the present suit and became aware of its pendency only while pursuing the records of the earlier litigation. It was contended that the trial Court erroneously relied upon the judgment of this Court in *Rajinder Singh Manhas v. Anil Gaiind & Ors.* decided on 25.04.2023, without appreciating that the facts of the said case were distinguishable.
5. Learned counsel further contended that under Order VIII Rule 1 CPC, the statutory period of 120 days commences only from the date of valid service of summons upon the defendant. In the present case, neither does the record disclose issuance or service of summons upon the petitioner in accordance with Order V CPC, nor has the trial Court recorded any satisfaction regarding due service. It was argued that under Order V Rule 1 CPC, summons is required to call upon the defendant to appear, answer the claim, and file the written statement within thirty days of service, extendable up to

ninety days for reasons to be recorded. Since the mandatory requirements relating to service were not complied with, the trial Court erred in mechanically closing the petitioner's right to file the written statement.

6. In support of the above submissions, reliance was placed upon the judgment of the Coordinate Bench in ***Abdul Qayoom Sheikh v. Sajad Haider***, CM(M) Nos. 2/2024 and 3/2024, decided on 28.11.2024, wherein it was held that unless the requirements of Order V CPC regarding service of summons are fully complied with, the period prescribed under Order VIII Rule 1 CPC cannot be reckoned against the defendant.
7. The respondent contended that the petitioner-defendant had been duly served with the summons, as was evident from the trial court record. It was argued that the trial court had recorded its satisfaction regarding service on the basis of the plaintiff's service affidavit, and that the defendant had also been served with the injunction order and the affidavit required under Order XXXIX Rule 3 CPC on 07.01.2023. According to the respondent, the period of 120 days prescribed for filing the written statement commenced from that date, and since the defendant failed to file the written statement within the prescribed period, the trial court rightly closed her right to do so. Reliance was placed on **AIR 2015 SC 1252** to contend that an endorsement of service by the Process Server constitutes sufficient service under Order V CPC unless successfully rebutted.
8. Having heard the respective Counsels and upon considering the rival submissions and examining the record, it emerges that the suit was instituted on 27.12.2022, whereupon summons was directed to be issued requiring the defendant to appear and file the written statement as well as objections to the interim application. On 25.01.2023, the trial court

recorded its satisfaction that service had been effected on the defendant on the basis of the plaintiff's affidavit and adjourned the matter awaiting her appearance. The defendant eventually entered appearance through counsel on 03.05.2023, filed a vakalatnama, and sought time to file the written statement. Despite subsequent opportunities, no written statement was filed. On 26.05.2023, the trial court, relying upon the judgment in *Rajinder Singh Manhas v. Anil Gaiind and others* dated 25.04.2023 supra held that the mandatory period of 120 days for filing the written statement had expired and, consequently, closed the defendant's right to file the same.

9. Thus, the controversy essentially turns on whether the service effected on the defendant was valid service of summons in accordance with Order V CPC, thereby commencing the limitation period **under** Order VIII Rule 1 CPC, or whether the service of the injunction order and documents under Order XXXIX Rule 3 CPC could not be treated as valid service of summons for the purpose of calculating the 120-day period. The answer to this issue determines the legality of the trial court's order closing the defendant's right to file the written statement.
10. Scanning of the record reveals that, although the Trial Court, vide order dated 27.12.2022, directed issuance of summons to the defendant for causing appearance and filing the written statement, the record is conspicuously silent regarding the issuance or service of any such summons upon the defendant. In fact, no summons was issued pursuant to the order dated 27.12. 2022. Instead, what was served upon the defendant, Rama Rani, was only a copy of the ex parte order dated 27.12.2022 passed by the Trial Court under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. The said order was served upon her on 07.01.2023, and its

receipt was duly acknowledged by her. The Trial Court, however, treated the said service as sufficient service in accordance with law and proceeded to compute the period of 120 days for filing the written statement therefrom, which period had admittedly expired by the time the impugned order came to be passed.

11. Whereas, vide the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, S.O. 1123(E) dated 18.03.2020, which came to be effected on that very day, Proviso 2 to Order VIII Rule 1 CPC has been substituted as under: -

“Provided that where the defendant fails to file the written statement with the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”

12. Prior to the issuance of the aforesaid S.O., the legal position prevailing in the Union Territory of Jammu and Kashmir was governed by the settled judicial interpretation that, notwithstanding the period prescribed under Order VIII Rule 1 of the Code of Civil Procedure, the Court, in exceptional circumstances and for reasons to be recorded, possessed the discretion to permit the defendant to file the written statement even beyond the prescribed period. In **AIR 2007 SC 1574, Aditya Hotels (P) Ltd. v. Bombay Swadeshi Stores Ltd.**, the Hon'ble Supreme Court held as under:

"The time limits prescribed under Order VIII Rule 1 CPC are directory in nature; however, extension of time is an exception and not the rule. The Court must insist upon a satisfactory explanation for the delay and record reasons in

writing before granting such extension, rather than extending time as a matter of routine."

13. In the said case, as neither the Trial Court nor the High Court had recorded any reasons justifying the acceptance of the written statement after the expiry of the prescribed period, the Hon'ble Supreme Court set aside the orders passed by both the Courts and remitted the matter to the Trial Court for fresh consideration in accordance with law.
14. However, with the coming into force of the Jammu and Kashmir Reorganisation Act, 2019 and the subsequent adaptation of the Code of Civil Procedure through the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020 (S.O. 1123(E) dated 18.03.2020), the legal position has undergone a material change. Under the substituted second proviso to Order VIII Rule 1 CPC, the defendant is required to file the written statement within 120 days from the date of service of summons. Upon the expiry of the said period of 120 days, the defendant forfeits the right to file the written statement, and the Court is divested of the jurisdiction to permit the written statement to be taken on record thereafter.
15. It was, however, submitted during the course of arguments that the validity of the aforesaid amendment is presently under challenge before this Court in various proceedings.
16. The petitioner has not laid any challenge to the validity of the aforesaid provision. Rather, the entire thrust of her submission is that the learned Trial Court failed to record its satisfaction regarding due service of summons in accordance with law. According to the petitioner, in the facts

of the present case, the said period could commence only after she had entered appearance before the Trial Court pursuant to valid service.

17. It is true that a Coordinate Bench of this Court, in *Abdul Qayoom Sheikh v. Sajad Haider*, while examining the question whether service had been duly affected in accordance with law, noticed that the defendant was alleged to have been served only with a copy of the interim order through registered post. However, neither the acknowledgment due card nor any other proof of service had been produced by the plaintiff in any of the suits so as to establish due service or to attribute knowledge of the proceedings to the defendant. In these circumstances, the Coordinate Bench held that the requirements of lawful service had not been satisfied. Paragraph 11 of the said judgment reads as under:

“Unless, a trial Court is fully satisfied with the service of summons of a suit upon the defendant, it will not be open to the said Court to take resort to stringent provisions contained in Order 8 Rule 1 CPC and close the right of the defendant to file written statement after the expiry of 120 days. Closure of right of a defendant to file written statement has serious consequences upon his civil rights, therefore, provisions contained in Order 8 Rule 1 CPC have to be strictly construed and the expression ‘service of summons’ appearing in Rule 1 of Order 8 has to be taken colour from the provisions contained in Order 5 of the CPC. Unless the requirements specified in Rules 9 to 30 of Order 5 of the CPC regarding service of process upon the defendants are not fully satisfied, it cannot be presumed by a civil Court that service of summons has been effected upon the defendants within the meaning of Rule 1 Order 8 CPC”.

18. Whereas, in the authority cited by the counsel for the respondent, it was an admitted case that no personal service of notice had been effected upon the appellants and while considering the issue of service and non-service of notice, the Hon’ble Apex Court, in **AIR 2015 SC 1252, Prabin Ram Phukan V/s State of Assam**, held in Paras 26 and 27 as under:-

“26. In our considered opinion, there lies a distinction between non-service of notice and a notice though served but with some kind of procedural irregularities in serving. In the case of former category of cases, all consequential action, if taken would be rendered bad in law once the fact of

non-service is proved whereas in the case of later category of cases, the consequential action, if taken would be sustained. It is for the reason that in the case of former, since the notice was not served on the person concerned he was completely unaware of the proceedings which were held behind his back thereby rendering the action “illegal” whereas in the case of later, he was otherwise aware of the proceedings having received the notice though with procedural irregularity committed in making service of such notice on him. If a person has a knowledge of the action proposed in the notice, then the action taken thereon cannot be held as being bad in law by finding fault in the manner of effecting service unless he is able to show substantial prejudice caused to him due to procedural lapse in making service on him. It, however, depends upon individual case to case to find out the nature of procedural lapse complained of and the resultant prejudice caused. The case in hand falls in former category of case.”

“27. In our considered opinion, therefore, it is mandatory on the part of the State to serve a proper notice to a person, who is liable to pay any kind of State’s dues strictly in the manner prescribed in the Regulation. It is equally mandatory on the part of the State to give prior notice to the defaulter for recovery of dues before his properties (moveable or/and immovable) are put to sale in the manner prescribed in the Regulation”.

19. Learned counsel for the respondent laid considerable emphasis on the submission that where a person has knowledge of the proceedings initiated against him, any action taken pursuant thereto cannot be invalidated merely on account of an irregularity in the mode of service, unless such person is able to demonstrate that substantial prejudice has been caused to him by the procedural lapse. It was, therefore, argued that the petitioner cannot dispute having been served with the order of temporary injunction and, once such service is admitted, the service ought to be treated as sufficient compliance with law.
20. The aforesaid submission, however, does not merit acceptance. The Trial Court, vide order dated 30.10.2021, directed issuance of summons to the defendant calling upon her to appear and file the written statement. A perusal of the record, however, does not disclose even the slightest material to indicate that any summons was ever issued by the Court or transmitted through the Process Serving Agency for effecting service upon the petitioner. The service of an ex parte order of temporary injunction cannot

be equated with the service of summons contemplated under Order V of the Code of Civil Procedure. Order V Rule 1 CPC mandates that, upon institution of a suit, every summons issued by the Court shall require the defendant to appear and answer the claim and to file the written statement of defence, if any, within thirty days from the date of service of the summons. The proviso thereto dispenses with the issuance of summons only where the defendant appears at the presentation of the plaint and admits the plaintiff's claim. Further, Rule 2 of Order V requires that every summons shall be accompanied by a copy of the plaint and shall be signed by the Judge or such officer as may be authorised in that behalf and sealed with the seal of the Court. Rule 16 further provides that where the serving officer personally delivers or tenders a copy of the summons to the defendant or to an authorised agent, he shall obtain the signature of the person served as an acknowledgment of service and endorse the same upon the original summons. The provisions of Order V thus prescribe not only the purpose for which summons is to be issued, namely, to require the defendant to appear and file a written statement in answer to the suit, but also the mandatory procedure and mode by which such summons is to be served.

21. On the other hand, Order XXXIX Rule 3 CPC operates in an altogether different field. It provides that where the Court proposes to grant an injunction without notice to the opposite party, it shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay and shall require the applicant to deliver or send to the opposite party, immediately after the grant of the injunction, a copy of the application for injunction, the plaint, copies of the documents relied upon,

together with a copy of the order of injunction, and to file an affidavit affirming compliance with the said requirement. The object of such service is merely to intimate the opposite party of the interim order and the material on the basis whereof it has been granted. Such service cannot, by any stretch of imagination, be treated as a substitute for the issuance and due service of summons under Order V CPC, which alone triggers the statutory period prescribed under Order VIII Rule 1 for filing the written statement. In that background trial court landed in error in relying on *Rajinder Singh Manhas v. Anil Gaind* case which was decided on different set of facts regarding effective service.

22. The distinction between service of summons under Order V and service of an interim order under Order XXXIX Rule 3 is not merely procedural but substantive. While the former initiates the defendant's obligation to appear before the Court and triggers the statutory timeline prescribed under Order VIII Rule 1 CPC for filing the written statement, the latter is confined to ensuring compliance with the principles of natural justice in relation to an ex parte interim order. To conflate the two would amount to reading into the statute something which the legislature has consciously omitted, so view taken in *Abdul Qayoom supra* is re-affirmed.
23. Accordingly, in the absence of lawful issuance and valid service of summons in accordance with the mandatory provisions of Order V CPC, the statutory period prescribed under Order VIII Rule 1 CPC could not have commenced. The Trial Court, therefore, fell into manifest error in computing the period of 120 days from the date on which the petitioner was served only with the ex parte injunction order and, on that basis, closing her right to file the written statement. The impugned order, having been passed

on an erroneous understanding of the statutory scheme, cannot be sustained in law hence is set-aside, written statement if filed shall be taken on record and if not be filed, immediately on next date of hearing whereafter the trial court shall proceed to dispose of the suit in accordance with law. Record be sent back and parties to appear before trial court on 10.08 2026.

24. ***Disposed of*** as such.

(Sanjay Parihar)
Judge

Jammu
14.07.2026
Diksha

Whether the order is speaking: Yes

Whether the order is reportable: Yes

