Serial No. 11

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CM(M) No. 29/2023
CM No. 1041/2023

Gulshan Kour and another …..Appellant(s)/Petitioner(s)

Through: Mr. Sachin Sharma, Advocate.

vs

Dali Rani ….. Respondent(s)

Through: Mr. Narinder Kumar Attri, Advocate.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
28.10.2026

1. Through the medium of present petition, the petitioners have challenged order dated 02.03.2020 passed by the learned Munsiff, Udhampur, whereby their application for grant of extension of time for filing the written statement, has been dismissed.

2. **Heard and considered.**

3. It appears that the respondent/plaintiff has filed a suit for permanent prohibitory injunction against the petitioners/defendants before the court of learned Munsiff, Udhampur (hereinafter to be referred as the 'Trial Court). Petitioner No. 1/defendant No. 1 was served with summons on 29.08.2019 and on 30.08.2019, vakalatnama was filed by the counsel on behalf of both the defendants/petitioners. Written statement on their behalf came to be filed on 20.01.2020, which is beyond the stipulated time of 120 days as laid down in proviso to Rule 1 of Order VIII CPC. Under these circumstances, the petitioners/defendants moved an application before the learned trial court seeking extension of time in filing of written statement.

4. The ground urged in the application for seeking extension of time is that petitioner No. 1/defendant No. 1 is an old lady, aged about 70 years and after causing her appearance before the court, she was operated upon for cataract of her left eye in November 2019. It has been further averred in the application that thereafter one of her close relatives died and she had to visit Delhi, where she remained for about 15 days. It has also been submitted that defendant No. 1 remained bed ridden and advocates had also abstained from work for one and a half months. Because of these reasons, she was unable to file the written statement within the stipulated period of 120 days. Petitioner No.1/defendant No. 1 along with her application placed on record the medical record. However, the learned trial court, vide order impugned, refused to extend the time for filing written statement on the ground that there are no exceptional circumstances as would convince the court to show indulgence in favour of the defendants.

5. The petitioners/defendants have challenged the impugned order on the grounds that provisions contained in Order VIII Rule 1 CPC are directory in nature and that the defendants have explained sufficient and reasonable cause for extension of time in filing the written statement. It is being contended that the learned trial court has fallen into error while passing the impugned order.

6. So far as the issue, as to whether provisions contained in proviso to Rule 1, Order VIII CPC are directory or mandatory in nature is concerned, the same has been settled by Division Bench of this Court in case titled **Anoop Dutta vs. Union Territory of Jammu and Kashmir and others [WP(C) No. 1307/2023 and connected**

matters] decided on 28.09.2026. In the said case, the Division Bench of this Court has, while upholding constitutional validity of proviso to Rule 1, Order VIII CPC as applicable to UT of J&K, held that statutory period of 120 days must be adhered to strictly and under normal circumstances and if the defendant violates the timeline provided under the amended Order V and Order VIII of CPC, right of the defendant shall stand forfeited. It has been further observed by the Division Bench that it is only in exceptionally hard circumstances, where the defendant is incapacitated to file the written statement beyond the timeline provided under amended Order V and VIII of CPC of 1908, for reasons beyond his control, permission can be granted by the court for filing the written statement beyond the mandatory timeline, subject to payment of costs and after recording reasons for doing so. It has been provided that discretion of extension of time shall be exercised by the court sparingly, cautiously only in exceptional hard cases, where it is impossible for the defendant to file the written statement within the prescribed timeline.

7. In light of the aforesaid legal position, let us now turn to the facts of the present case. In the application seeking extension of time in filing the written statement, the reason assigned by the defendants is that defendant No. 1 is an old lady and she had undergone cataract surgery in November, 2019, whereafter one of her close relatives died and she had to visit Delhi. Another reason for not filing the written statement within the stipulated time is that the lawyers had abstained from work for about one and a half months.

8. So far as the ailment of defendant No. 1 is concerned, the defendants have placed on record medical record, which shows that defendant No. 1 had remained admitted to hospital from 05.11.2019 to 06.11.2019, for two days. No other medical record has been produced to show that defendant No. 1 had either been hospitalised or she had suffered any other ailment during the relevant period. In fact, she has, in her application itself, submitted that after undergoing cataract surgery, she went to Delhi to attend the death of one of her close relatives, meaning thereby she was in a position to move from one place to another. If that is so, her assertion that she could not contact her advocate for filing the written statement, cannot be accepted.

9. So far as suspension of work by the advocates is concerned, the same does not form a ground for extending the time for filing written statement and in any case, the said ground cannot be categorised as an exceptionally hard circumstance that would make it impossible for a defendant to file written statement within the stipulated time. Thus, the defendants/petitioners have failed to make out a case for extension of time in filing the written statement.

10. For the foregoing reasons, I do not find any ground to interfere with the impugned order passed by the learned trial court. The petition lacks merit and the same is, accordingly, **dismissed along with the connected application.**

(SANJAY DHAR)
JUDGE

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I attest to the accuracy and
integrity of this document