

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.41 of 2023

The State of Tripura & others

.....Petitioner(s);

Versus

MS. Madhumita Paul & others

.....Respondent(s)

For Petitioner(s)	:	Mr. Debalay Bhattacharya, G.A., Mr. Karnajit De, Addl. G.A.
For Respondent(s)	:	Mr. P. Saha, Advocate, Mr. Samarjit Bhattacharjee, Advocate, Mr. Kawsik Nath, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

11/10/2023

Notice has been validly served upon the respondents; though only respondents No. 1 & 3 have appeared through Mr. Kawsik Nath, learned counsel and Mr. P. Saha, learned counsel respectively.

2. Heard Mr. Karnajit De, learned Additional Government Advocate, for the petitioners-State, Mr. Kawsik Nath, learned counsel for the respondent No.1 and Mr. P. Saha, learned counsel for the respondent No.3.

3. Petitioners-State of Tripura and its officials are aggrieved by the impugned order dated 30.05.2023 whereby they have been debarred from filling written statement. Mr. De, learned Additional Government Advocate for the petitioners-State, submits that the instant matter arises out of Money Suit No.02/2023 instituted by the plaintiff/respondent No.1 herein seeking compensation of Rs.99 lakhs along with 18% interest per annum with effect from 23.05.2022 from the petitioners herein. It is submitted that the summons was served on 24.02.2023 upon the defendants No.1, 2, 4, 5 & 6, who are the

petitioners herein. The said defendants/petitioners being State and its officials, written statement had to be prepared and vetted at different levels before filing. On 29.05.2023 it was sent for vetting to the Law Department. On 30.05.2023, i.e. on the date on which the impugned order was passed, petitioners had filed a time petition. However, the learned Trial Court, without considering the prayer and the genuine reasons explained by the defendants, refused to extend time to file written statement. It is submitted that provisions under Order VIII Rule 1 of CPC have been held to be directory and not mandatory. There was no such inordinate unexplained delay on the part of the defendants in filing the written statement. It is submitted that if the written statement is not allowed to be taken on record, the suit may remain uncontested and thereby cause irreparable injury to the defendants against whom the compensation of Rs.99 lakhs along with interest has been claimed by the plaintiff/respondent No.1. Therefore, the impugned order may be set aside and petitioners may be allowed suitable time to file written statement.

4. Mr. Kawsik Nath, learned counsel for the respondent No.1, has opposed the prayer. He submits that the defendants/petitioners herein did not have any worthwhile explanation. As per the provisions of Order VIII Rule 1 of CPC, suitable extension of time up to 30 days could be granted; but any extension of time beyond 90 days can only be granted if the defendant pleads and satisfactorily demonstrates a valid reason for not filing the written statement. The concerned defendants did not provide any valid reason except bureaucratic delays in filing written statement. It is submitted that in case this Court is inclined to allow the prayer, the defendants/petitioners may be saddled with suitable costs.

5. Respondent No.3 is a proforma respondent represented through learned counsel Mr. P. Saha.

6. I have considered the submission of learned counsel for the parties, taken note of the materials placed from record and also gone through the impugned order.

The legal position as regards the period of time stipulated under Order VIII Rule 1 of CPC has been well settled by a decision of the Apex Court in the case of *Salem Advocate Bar Association, T.N. v. Union of India* reported in (2005) 6 SCC 344. The provision has been held to be directory in nature. The same view has been reiterated in subsequent decisions such as in the case of *Atcom Technologies Limited v. Y.A. Chunawala and Company & others* reported in (2018) 6 SCC 639 and also in the case of *Desh Raj v. Balkishan* reported in (2020) 2 SCC 708 as regards non-commercial disputes. The Apex Court has held that proviso to Order VIII Rule 1 of CPC enables the Court to extend the period of 30 days up to 90 days for filing written statement from the date of service of summons. However, the onus upon the defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within thirty days.

In the case of *Atcom Technologies Limited* (supra), the delay was more than five years in filling the written statement, which had been allowed by the High Court with cost of Rs.5 lakhs. Therefore, the same was set aside.

7. In the present case, on the one hand the delay does not appear to be inordinate. On the other hand, the defendants have taken a plausible reason that considering the set up of the defendant government and its authorities, the

relevant file has to be vetted at different levels including the Law Department before it is to be filed. It appears that though a time petition was filed for suitable extension of time on the part of the defendants/petitioners herein, but the same has been declined without any reason by the learned Court of Civil Judge (Senior Division), North Tripura Judicial District, Dharmanagar vide impugned order dated 30.05.2023.

8. In view of the aforesaid reasons, this Court is inclined to allow the prayer by setting aside the impugned order so far as it relates to debarment from filing written statement as against defendants No.1, 2, 4, 5 & 6, who are petitioners herein. Petitioners are allowed 2(two) weeks' time to file written statement, however, with a cost of Rs.5,000/- to be paid to the plaintiff/respondent No.1 herein.

9. The revision petition is disposed of accordingly. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ