

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.78 of 2024

1. Smt. Shefali Nath Choudhury, wife of late Kiriti Kingkar Nath Choudhury, resident of Padmapur, P.S. & Sub- Division- Dharmanagar, District- North Tripura;
2. Smt. Kusumika Nath Choudhury, daughter of late Kiriti Kingkar Nath Choudhury, resident of Padmapur, P.S. & Sub- Division- Dharmanagar, District- North Tripura;
3. Smt. Kakali Nath Choudhury, wife of Sri Palash Sengupta, daughter of late Kiriti Kingkar Nath Choudhury, resident of Padmapur, P.S. & Sub- Division- Dharmanagar, District- North Tripura;

..... Petitioner (s).

Versus

1. Smt. Sumana Nath Choudhury, wife of Manoranjan Debnath, daughter of late Karuna Nath Choudhury, resident of Dhaleswar, near Goraknath Temple, Kalyani, Chandrapur, P.S. East Agartala, District- West Tripura;
2. Smt. Rupali Nath Choudhury, wife of Manik Debnath, daughter of late Karuna Nath Choudhury, resident of Ranakalitila, Nabadip, District- Nadia, West Bengal;
3. Sri Anil Baran Nath, son of late Indra Mohan Nath, husband of late Samita Nath @ Apu Nath, resident of Panisagar, near Assam-Agartala road, P.S. & Sub-Division- Panisagar, District- North Tripura;
4. Sri Amit Kumar Nath, son of Sri Anil Baran Nath, resident of Panisagar Bazar, near Assam- Agartala road, P.S. & Sub-Division- Panisagar, District-North Tripura;

..... Plaintiff Respondent(s).

5. Sri Niranjana Chandra Nath, son of Sri Naresh Chandra Nath, resident of Baruakandi, P.S. & Sub-Division- Dharmanagar, District- North Tripura;
6. Sri Sajal Debnath, son of Mahananda Debnath, resident of Salema, P.S. Salema, District- Dhalai, Tripura;
7. Smt. Sabitri Rani Nath, wife of Sri Manaranjan Nath, resident of Rajnagar, P.S. & Sub-Division- Dharmanagar, District- North Tripura;
8. Sri Tarun Debnath, son of Dayananda Debnath, resident of Office Tilla, P.S. & Sub- Division- Dharmanagar, District- North Tripura;
9. Sri Arun Kumar Nath, son of Sri Dayananda Debnath, resident of Office Tilla, P.S. & Sub- Division- Dharmanagar, District- North Tripura;
10. Smt. Sarmistha Choudhury, daughter of Sri Naresh Chandra Choudhury, wife of Sri Dilip Debnath, resident of Nathpara, Chandrapur, P.O. Reshambagan, Agartala-799008, West Tripura;
11. Smt. Aparna Choudhury, wife of Sri Naresh Chandra Choudhury, resident of Dhaleswar, P.S. East Agartala, Agartala, West Tripura;

12. Smt. Nabanita Shome (Deb), wife of Sri Niharendu Sekhar Deb, resident of Algapur, P.S. & Sub-Division- Dharmanagar, District- North Tripura;
13. Smt. Bina Nag (Deb), wife of Sri Ajit Deb, resident of Padmapur, Madhubari Road, P.S. & Sub-Division- Dharmanagar, Dist.- North Tripura;
14. Sri Sandip Nath, son of Sri Sanju Nath, resident of Padmapur, Madhubari Road, P.S. & Sub-Division- Dharmanagar, District- North Tripura;
15. Smt. Sheuli Namasudra, wife of Sri Nepal Namasudra, resident of Padmapur, P.S. & Sub- Division- Dharmanagar, District- North Tripura;
16. Sri Rajat Paul, son of late Rakesh Chandra Paul, resident of Ragna, P.S. & Sub-Division- Dharmanagar, District- North Tripura;
17. Sri Tarani Malakar, son of late Behari Malakar, resident of Kanchanbari, P.S. Fatikroy, District- Unakoti, Tripura;

.....Principal Defendants/ Respondents

18. Sri Abinash Debnath, husband of Malati Nath Choudhury, son of late Rajan Kanta Debnath, resident of Padmapur, Harichand Road, P.S. & Sub-Division- Dharmanagar, District- North Tripura;
19. Smt. Maumita Debnath, C/o and D/o of Sri Abinash Debnath, resident of Padmapur, Harichand Road, P.S. & Sub-Division- Dharmanagar, District- North Tripura;
20. Sri Rabindra Debnath, husband of late Bina Nath Choudhury, resident of Nilambazar, Bahadurpara, District- Karimganj, Assam;
21. The Sub-Registrar, Dharmanagar Sub- Registrar Office, Dharmanagar, North Tripura;

..... Pro-Defendants-Respondents

For Petitioner (s) : Mr. Biplab Debnath, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

ORDER

03/10/2024

Heard Mr. Biplab Debnath, learned counsel for the petitioner.

Despite valid service of notice upon the respondents no one has appeared on behalf of the plaintiffs-respondents.

[2] Petitioners are the defendants Nos.1, 2 & 3 in T.S. 04 of 2024.

They received summons on 16.03.2024 in T.S. 04 of 2024 which has been instituted for a decree that the plaintiffs and defendants No.1, 2 & 3 along

with other co-sharers are the joint possessor & owner of the suit land and plaintiffs have right, title, interest and possession over the suit land specifically described as schedule 'A'. Plaintiffs had also sought a declaration that title suit deeds indicated at paragraph 27(b) specifically described in schedule 'B' are illegal, collusive and fraudulent thereby null & void and not binding upon the plaintiffs and liable to be cancelled. The learned trial Court has not permitted the defendants No.1 to 3 /petitioners herein for filing written statement only after 98 days of the receipt of summons vide order dated 24.06.2024. The learned trial Court has, however, also debarred defendants Nos.4, 5, 7, 8, 12, 13, 15 to 18 and 20 from filing written statement as despite service of summons they had chosen to remain absent. Regarding defendant No. 6, learned trial Court has directed the plaintiffs to take fresh steps for summons upon defendant No.6. It is submitted that if the impugned order is not interfered with, the suit may remain un-contested and lead to serious miscarriage of justice. The delay, if any, is neither inordinate or intentional nor the prescription of time under Order VIII CPC Rule 1 is mandatory in view of the 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.

[3] I have considered the submission of the learned counsel for the defendant Nos.1 to 3/ petitioners herein. On perusal of the impugned order itself and upon hearing learned counsel for the petitioner, it is apparent that the petitioners have been debarred from filing written statement just after 98 days of the service of summons on 16.03.2024 though they had appeared and filed an application, praying for time to file written statement. Discretion is

available with the trial Court to condone the explained delay if it is beyond the period of 90 days since the statutory period prescribed under Order VIII Rule 1 of CPC has been held to be directory in the case of *Salem Advocate Bar Association, T.N. v. Union of India* reported in (2005) 6 SCC 344 and followed by later decisions. As such, this Court is of the view that interest of justice would be served if the defendant No.1 to 3/ petitioners are allowed to file written statement. Impugned order so far as it relates to the defendants No.1 to 3/petitioners herein is accordingly set aside. Learned trial Court would permit the defendants No.1 to 3/petitioners herein to file written statement by the next date.

[4] Accordingly, the instant petition is disposed of. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ