

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.1 of 2025

1. Sri Amiya Saha, S/o Sri Ganesh Chandra Saha.
2. Sri Ganesh Chandra Saha, S/o Late Gouranga Chandra Saha.
Both resident of Uttar Salgarha, P.O. Salgarah, P.S. Radhakishorepur,
Gomati, Tripura, Pin-799114.

..... Petitioner(s).

V E R S U S

Sri Tapan Saha, S/o Late Gouranga Chandra Saha, resident of Uttar Salgarha,
P.O. Salgarah, P.S. Radhakishorepur, Gomati, Tripura, Pin-799114.

..... Respondent(s).

For Petitioner(s)	: Mr. Supriya Chakraborty, Advocate, Mr. Jayanta Majumder, Advocate.
For Respondent(s)	: Ms. Mampi Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

19/03/2025

Heard Mr. Supriya Chakraborty, learned counsel together with
Mr. Jayanta Majumder, learned counsel for the petitioners and Ms. Mampi
Chakraborty, learned counsel for the respondent.

By the order dated 11.06.2024, the prayer for time for filing of the
written statement by the defendants No. 1 and 2-petitioners herein was rejected
and they were debarred from filing written statement. The defendant Nos.1 and
2 had received summons on 11.03.2024. The prayer for further time for filing
written statement by defendant Nos.1 and 2 was only few days beyond the
statutory period of 90 days for filing written statement under Order VIII Rule 1
of the CPC. Petitioners instead of challenging the said order, filed another
petition under Section 148 of the CPC read with Order VIII Rule 1 of the CPC
for acceptance of written statement which has been rejected by another
impugned order dated 16.12.2024.

Mr. Supriya Chakraborty, learned counsel for the petitioners submits that there is no inordinate delay in seeking to file written statement but the learned Court vide order dated 11.06.2024 debarred them from filing written statement. The case T.S. No.12/2024 is at the stage of filing of examination-in-chief of plaintiff witnesses. The progress of the trial has not gone so far as to cause any serious prejudice to the case of the plaintiffs. Therefore, defendants/petitioners may be allowed to file written statement. The impugned orders may be set aside.

Ms. Mampi Chakraborty, learned counsel for the respondent has strongly opposed the prayer. She submits that the defendants/petitioners have instead of seeking vacation of the ex-party order under Order IX Rule 7 of the CPC, filed another application for extension of time under Section 148 of the CPC read with Order VIII Rule 1 of the CPC when such a provision is inapplicable once they were debarred from filing written statement. She, however, does not dispute that the trial is at the stage of filing of examination-in-chief of PWs. She also, however, does not dispute that the order dated 11.06.2024 was passed only two days after the expiry of statutory period of 90 days for filing written statement under Order VIII Rule 1 of the CPC.

Having considered the submissions of the learned counsel for the parties and the materials placed from record, this Court is satisfied that there was no inordinate delay on the part of the defendants/petitioners in seeking further time to file written statement beyond the period of 90 days as prescribed under Order VIII Rule 1 of the CPC. The defendants/petitioners had been served with the summons on 11.03.2024 and the impugned order passed on 11.06.2024 i.e. about 92 days. In the case of **Salem Advocate Bar Association,**

T.N. Versus Union of India reported in **(2005) 6 SCC 344**, the Apex Court has held that provisions of Order VIII Rule 1 of the CPC are directory in nature.

In such circumstances, this Court is of the considered view that interest of justice would be better served if the defendant Nos.1 and 2/ petitioners herein are allowed to file written statement since the trial is only at the stage of filing of examination-in-chief of PWs.

Accordingly, the impugned orders dated 11.06.2024 and 16.12.2024 are set aside. Since defendants/petitioners have already filed written statement, the same be accepted and taken on record subject to payment of cost of Rs.5,000/- in favour of the plaintiff within a period of two weeks.

As such, the instant petition is disposed of. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ