

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
CRP No.34 of 2025

Md. Rasid Miah, son of late Tarab Ali, resident of village- Tarapur, P.S. Dhanpur, P.S. Sonamura, District- Sepahijala, Tripura.

..... *Defendant No.2-Petitioner(s)*

V E R S U S

1. Md. Hossain, son of late Ali Miah, resident of Sonamura Town (near Matsys Bazar), P.O. & P.S. Sonamura, District- Sepahijala, Tripura.

..... *Plaintiff Respondent(s)*

2. Sri Sailesh Sarkar, son of late Jagabandhu Sarkar, resident of Village & P.O. Rabindranagar, P.S. Sonamura, District- Sepahijala, Tripura.

..... *Defendant 1 Respondent(s)*

For Petitioner(s) : Mr. D.K. Daschoudhury, Advocate.

For Respondent(s) : Mr. Prasenjit Shil, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

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22/08/2025

This revision is preferred against the order dt.29.04.2025 of the Civil Judge (Sr. Division), Court No.1, Sepahijala District, Sonamura, in T.S. No.25 of 2024 rejecting the petition filed by the petitioner/second defendant seeking permission to submit written statement beyond the period of 90 days with a delay of 12 days.

[2] In the impugned order passed by the Civil Judge (Sr. Division), it is noted that the time for filing written statement is 30 days which can be extended up to 90 days; and that it cannot accepted beyond that period. It is also stated that the application filed by the second defendant/petitioner appears to be not in form and that sufficient grounds do not exist to convince the Court that he was prevented from filing it within the prescribed period.

[3] In *Salem Advocate Bar Association, Tamil Nadu versus Union of India*, reported in *AIR 2005 SC 3353*, the Supreme Court has held that there is no complete bar to admit written statement filed beyond the period of 90 days. The Supreme Court held that rules of procedure are made to advance the cause of justice and not to defeat it and that mere use of the word 'shall' in Order VIII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. It held that in the context of the provision, despite use of the word 'shall', the Court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if the written statement is not filed and instead pass such order as it may think fit in relation to the suit. Applying the doctrine of harmonious construction, the Supreme Court held that the court under Order VIII Rule 10, in its discretion would have power to allow the defendant to file written statement even after the expiry of period of 90 days provided in Order VIII Rule 1 and that there is no restriction in Order VIII Rule 10 that after expiry of 90 days, further time cannot be granted. It categorically held that the upper limit of 90 days to file written statement is only directory though it observed that it cannot be extended as a matter of routine but in some hard cases it can be done.

[4] In the instant case, the delay in filing the written statement is only 12 days beyond the 90 days period fixed in Order VIII Rule 1 CPC. In the application filed for receiving the written statement, it is specifically contended that though summons were served on 10.09.2024, the summons were not accompanied by documents relied upon by the respondent/plaintiff and, therefore, it was difficult for the petitioner to prepare the written

statement and submit it before the Court within time. It is contended that counsel for the petitioner had requested several times to counsel for the plaintiff to supply copy of documents to enable the petitioner to prepare his written statement, but the later did not respond. Ultimately on 11.11.2024, an application was moved before the Court to direct the respondent/plaintiff for supply of copies of documents to the petitioner. Only then, the same were supplied and this caused the delay.

[5] It is not denied in the counter affidavit filed by respondent to the said application that along with the summons, documents were not supplied to the petitioner or his counsel. Without the documents being furnished, it would not be possible for the petitioner/2nd defendant to file written statement. Therefore, the Court below should have allowed the application for receipt of written statement though it was filed with a delay of 12 days taking into account the reasons assigned by the petitioner instead of dismissing it.

[6] Accordingly, the Civil Revision Petition is allowed. The order dt.29.04.2025 passed by the Civil Judge (Sr. Division), Court No.1, Sepahijala District, Sonamura in T.S. No.25 of 2024 rejecting the written statement filed by the petitioner is set aside, and the Court below is directed to receive the written statement and proceed further in the matter.

[7] The instant Civil Revision Petition is disposed of. No costs.

Pending application(s), if any, also stands disposed of.

(M.S. RAMACHANDRA RAO, CJ)