

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.47/2025

1. Smt. Sabita Das (Saha), Wife of late Samarendra Saha,
2. Sri Rupak Saha alias Rupendra Saha, S/O. Late Kabindra Saha,
Both are residents of Eastern Bank of Fatik Sagar, P.O.-Amarpur, P.S.-Birganj,
District-Gomati, Pin-799101, Tripura, Age-45 years.

..... Petitioner(s).

V E R S U S

Smt. Manti Rani Pal, wife of Sri Nikhil Chandra Pal, resident of Amarpur
Motorstand, P.O.-Amarpur, P.S.-Birganj, District-Gomati, Tripura, Pin-799101.

..... Respondent(s).

For Petitioner(s) : Mr. Dilip Kumar Das Chawdhury, Advocate.

For Respondent(s) : Ms. Mampi Chakraborty, Advocate.

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

Order

21/11/2025

This revision is preferred against the order dt.10.06.2025 of the Civil Judge, Senior Division, Court No.1, Gomati District, Udaipur refusing to condone delay beyond 90 days for filing of written statement by the petitioners, who are defendants in the said suit.

2. Admittedly, summons in the suit were served on the petitioners on 24.01.2024, but they did not file the written statement before 23.04.2024, when the 90 days period fixed under Order VIII Rule 1 of CPC expired.

3. Alleging that the Advocate engaged by the petitioners went to Guwahati for his eye treatment, this application seeking permission to file written statement was filed on 14.08.2024.

4. The Court below dismissed the said application on two grounds. Firstly, it held that previously such an application to extend time for filing written statement had been rejected on 26.04.2024 and the said order had attained finality and is subsisting. Secondly, that under Order VIII Rule 1 of

CPC normal time for filing written statement is only 30 days from the date of service of summons on the defendant, but it can be extended to 90 days for reasons to be recorded. It also held that the written statement had been filed 203 days after receipt of summons and the delay cannot be condoned.

5. Challenging the same, this revision is filed.

6. The issue relating to the time limit prescribed in Order VIII Rule 1 of CPC of 30 days, extendable up to 90 days came up for consideration before the Supreme Court in the case of ***Salem Advocate Bar Association, T.N. v. Union of India***¹. Supreme Court held in the said judgment as under:

"20. The use of the word "shall" in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.

21. In construing this provision, support can also be had from Order 8 Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the court, the court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the court has been given the discretion either to pronounce judgment against the defendant or

¹ (2005) 6 SCC 344

make such other order in relation to the suit as it thinks fit. 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. In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 Order 8, the court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to “make such order in relation to the suit as it thinks fit”. Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1.”

7. The Supreme Court thus held that time can be extended only in exceptionally hard cases and while extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. It also held that order extending time to file written statement cannot be made routinely and such time can be extended only in exceptionally hard cases.

8. Having regard to the said judgment of the Supreme Court and having regard to the fact that the previous application filed by the petitioner for the same relief had already been dismissed on 26.04.2024 and the reason assigned by petitioners now cannot be countenanced, I do not find any error in

the order of the Court below dismissing the application for granting leave to receive the written statement belatedly.

9. Therefore, the revision petition is dismissed. No costs.

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

(M.S. RAMACHANDRA RAO, CJ)



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