

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
CRP No.106 of 2024

Sri Sunil Chandra Das, son of late Radha Charan Das, resident of Village & P.O. Uttar Charilam, P.S. Bishalgarh, District- Sepahijala, Tripura.

..... *Defendant-Petitioner(s)*

V E R S U S

1. Sri Badal Nama, son of late Biswambar Nama, resident of Village- Rangamatia, P.O. Khedabari, P.S. Sonamura, District- Sepahijala, Tripura.

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

2. Sri Laxman Das, son of late Atul Chndrad Das, resident of Village & P.O. Khilpara, P.S. Radhakishorepur, District- Gomati Tripura.

..... *Defendant-Respondent(s)*

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

For Respondent(s) : Mr. Dulal Chandra Saha, Advocate,
Mr. Samarjit Bhattacharjee, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

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05/03/2025

Heard Mr. D.K. Daschoudhury, learned counsel for the petitioner and Mr. Dulal Chandra Saha, learned counsel and Mr. Samarjit Bhattacharjee, learned counsel for the respondents.

Petitioner has sought to challenge the two orders, one is dated 19.02.2024 whereby the prayer for acceptance of written statement was rejected by the learned Civil Judge (Sr. Division), Court No.1, Gomati District, Udaipur in connection with T.S 04 of 2023. The other order under challenge is dated 10.09.2024 whereby the prayer for review of the earlier order of rejection dated 19.02.2024 was declined. Petitioner being defendant No.1 had received the summons on 18.11.2023 and was supposed to submit the written statement within a statutory period of 90 days by 16.02.2024 but

a prayer for time was made on his behalf on 19.02.2024. The same was accordingly rejected.

Petitioner had taken a plea that he is 73 years old person with various ailments and he was also under treatment between 01.01.2024 to 29.01.2024. Therefore, he was unable to contact his counsel. Learned Trial Court, however, declined to accept the written statement as it was filed beyond the statutory period. Being aggrieved, the petitioner preferred the instant revision petition.

Learned counsel for the petitioner submits that there was no inordinate delay on behalf of the defendant No.1-petitioner as only after three days of the expiry of 90 days period a request for time was made on 19.02.2024 which has been declined. The learned Trial Court has later refused to review the order apparently guided by the rejection earlier. If the suit remains uncontested it would cause miscarriage of justice to the petitioner. The impugned orders may therefore be set aside.

Learned counsel for the respondent No.1 has not filed any objection despite time granted on 22.01.2024. He, however, objects to the prayer of the petitioner. He submits that no sufficient cause was shown on behalf of the defendant No.1-petitioner for seeking further time for filing the written statement. The respondent No.2 has not filed any objection to the present petition. Mr. Samarjit Bhattacharjee, learned counsel for the respondent No.2 supports the prayer of the petitioner on the ground that the provisions of Order VIII, Rule, I of CPC are directory in nature in view of the judgment rendered in case of ***Salem Advocate Bar Association, Tamil Nadu versus Union of India***, reported in (2005) 6 SCC 344.

On consideration of rival submission of the parties and the materials placed from record, this Court is of the considered view that the provisions under Order VIII, Rule 1 of CPC being directory in nature as held by the Apex Court in case of ***Salem Advocate Bar Association*** (supra), the learned Trial Court ought to have granted time to the defendant No.1-petitioner as there was no inordinate delay in filing the written statement beyond 90 days of the date of receipt of summons. The explanation furnished for seeking time to file written statement is not completely without substance. The procedural law is handmaid of justice. They are to be interpreted in a manner which helps the Court in arriving at a just decision of the issue in controversy between the parties.

In such circumstances, the impugned orders dated 19.02.2024 and 10.09.2024 are accordingly set aside. The defendant No.1-petitioner be allowed to file written statement within a period of 2(two) weeks, however, with a cost of Rs.2,000/- to be paid to the plaintiff on the next date before the learned Trial Court.

The instant petition is disposed of accordingly.

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

(APARESH KUMAR SINGH) CJ

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