

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case No. CM(M) No. 236/2025

CM No. 5198/2025

CM No. 5199/2025

CM No. 5308/2025

CM No. 5309/2025

Date of pronouncement:- 10.10.2025

Date of uploading:- 15.10.2025

Deep Singh

.....Petitioner(s)

Through: Mr. Sandeep Bhat, Advocate.

Vs

Ashwani Kumar and anr.

..... Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

(ORDER)

1. Through the medium of present petition, the petitioner has challenged orders dated 05.08.2025, 14.08.2025 and 20.08.2025 passed by learned Principal District Judge, (with the powers of the Commercial Court), Udhampur (hereinafter referred to as "the trial Court") whereby written statement filed by the respondents/defendants in the suit filed by the petitioner/plaintiff has taken on record. Challenge has also been thrown to order dated 20.08.2025 passed by the learned trial Court whereby the application of the petitioner/plaintiff for grant of interim relief under Order 39 Rule 1 & 2 CPC has been dismissed.

2. I have heard learned counsel for the petitioner and perused record of the case.

3. It appears that the petitioner/plaintiff has filed a suit for specific performance of oral agreement dated September, 2021 against the respondents/defendants compelling them to fulfill their obligations regarding establishment and operation of the petrol pump on the land measuring 02 kanals 10 marlas falling in khasra No. 727 situated at village Ballian Tehsil and District Udhampur. A permanent prohibitory injunction restraining the respondents/defendants from alienating, selling or transferring their interest in the aforesaid land with a decree for recovery of an amount of Rs. 16 lacs from the defendants/respondents has also been sought by the petitioner/plaintiff.

4. The suit was filed before the trial Court under the Commercial Courts Act by projecting it to be commercial dispute. On 06.06.2025, summons of the suit were issued to the defendants/respondents. It is not clear from the trial Court record as to when the summons were served upon the defendants. On the next date i.e. on 28.06.2024, defendant No. 1 appeared in person alongwith his counsel who filed Vakalatnama on his behalf. On the next date i.e. on 02.08.2025, learned Presiding Officer was on leave and the matter was adjourned to 05.08.2025. On the said date, the defendants filed their joint

written statement which was taken on record. On the next date, i.e. on 12.08.2025, an application was filed by the plaintiff seeking amendment of the plaint and the defendants were directed to file reply to the said application. On the next date i.e. on 14.08.2025, the plaintiff filed an application for striking out the written statement filed by the defendants. The arguments on the said application along with arguments on application under Order 39 Rule 1 & 2 CPC were heard by the learned trial Court on the said date. On 20.08.2025, two separate orders came to be passed by the learned trial. In terms of one order, the learned trial Court dismissed the application of plaintiff for striking off the written statement filed by the defendants and vide another order, the learned trial Court dismissed the application of plaintiff under Order 39 Rule 1 & 2 CPC.

5. Initially, the present petition was filed for assailing orders dated 05.08.2025 and 14.08.2025 which relate to the issue pertaining to taking on record of written statement filed by the defendants but later on, the petition was amended to incorporate challenge to two separate orders passed by the learned trial Court on 20.08.2025.

6. So far as, orders dated 05.08.2025, 14.08.2025 and 20.08.2025 relating to filing of written statement by the defendants is concerned, in this regard, it is to be noted that as

per the provisions contained in Order VIII Rule (1) CPC as applicable to Commercial Suits and as applicable to ordinary suits in the Union Territory of J&K, there is no difference. As per Rule (1) of Order VIII of CPC, defendants have to file written statement within a period of 30 days from the date of service of summons and they can be allowed to file written statement within a period of 120 days from the date of service of summons for the reasons to be recorded in writing and on payment of costs. It is further provided that in case the written statement is not filed within a period of 120 days from the date of service of summons, the defendants forfeit their rights to file written statement and the Court cannot allow the written statement to be taken on record.

7. In the instant case, as already stated, there is nothing on record to show as to when the summons were served upon the defendants. However, minutes of the proceedings of the trial Court would reveal that defendant No. 1 put in his appearance on 28.06.2025 and his counsel also appeared on the said date, so we will have to reckon the period of 30 days from 28.06.2025. The written statement has been filed by the defendants on 05.08.2025 i.e. beyond the period of initial 30 days but within the maximum period of 120 days, as provided in Order VIII Rule (1) of the CPC. The question that arises for consideration is as to whether it was incumbent upon the trial Court to record reasons for taking on

record the written statement filed by defendants beyond the initial period of thirty days and to award costs to the plaintiff which is mandated under proviso to Rule 1 of Order VIII CPC.

8. A perusal of order dated 05.08.2025 passed by the trial Court would reveal that when the defendants filed their written statement, no objection was raised by learned counsel for the plaintiff though he was present on the said date meaning thereby that the plaintiff conceded to the extension of time in filing the written statement by the defendants. Even on the next date of hearing i.e. on 12.08.2025, the plaintiff did not raise any objection and instead filed an application seeking amendment of the plaint. Once, the plaintiff sought amendment of the plaint and proposed to incorporate additional facts in the plaint, he cannot blame the defendants for causing delay in proceedings of the suit on account of having breached the deadline of thirty days in filing the written statement. The learned trial Court while rejecting the application of plaintiff for striking out the written statement filed by the defendants, has rightly observed that once the written statement is taken on record without objection from the plaintiff, the same cannot be struck off from the record.

9. In view of the above, this Court does not find any error of fact or error of law having been committed by the learned trial Court while declining to strike off the written statement filed by

the defendants. The petition to this extent deserves to be dismissed.

10. That takes us to the legality of order dated 20.08.2025 passed by the learned trial Court whereby application of the plaintiff for grant of interim injunction has been dismissed. The said order is appealable in nature. The plaintiff instead of seeking amendment to the present petition should have filed an appeal against the said order. It is trite law that the High Court is loath to exercise its supervisory jurisdiction against an order passed by an inferior Court which is appealable in nature. Therefore, this Court refuses to entertain the petition so far as it relates to challenge to order dated 20.08.2025 whereby the learned trial Court has dismissed the application of plaintiff under Order 39 Rule 1 & 2 CPC.

11. The petition is, accordingly, dismissed leaving it open to the plaintiff to file an appeal against order dated 20.08.2025 passed by the learned trial Court whereby his application under Order 39 Rule 1 & 2 CPC has been dismissed.

(SANJAY DHAR)
JUDGE

JAMMU
10.10.2025
Tarun/PS

Whether order is speaking: Yes
Whether order is reportable: No