

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

CR No. 79/2019

Yash Paul

.....Petitioner

Through: Mr. Abhirash Sharma, Advocate.

Vs

Pardeep Kumar & Ors.

..... Respondents

Through: Mr. Nigam Mehta, Advocate.

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

ORDER
06.10.2025

1. Through the medium of present petition, the petitioner has challenged order dated 20.03.2019 passed by learned Sub Judge (Special Mobile Magistrate), Kathua whereby application of the petitioner/plaintiff for striking off the written statement filed by defendants/respondents No. 1 to 5 has been dismissed.

2. Heard and considered.

3. Learned counsel for the petitioner/plaintiff has submitted that the written statement filed by defendants/respondents No. 1 to 5 to the suit filed by the plaintiff/petitioner before the trial court was filed beyond the prescribed period of 90 days from date of service of the summons upon defendant/respondent No. 1, therefore, the written statement filed by defendants/respondents No. 1 to 5 could not have been taken on record by the learned trial court. It has been submitted that when this fact was brought to the notice of the

learned trial court by the plaintiff/petitioner by way of an application, the same was dismissed without assigning any cogent reasons.

4. It is to be borne in mind that at the time when the impugned order came to be passed, the Jammu & Kashmir Code of Civil Procedure, Svt. 1977 was in operation, therefore, we have to consider the present case in light of the provisions contained in Order VIII Rule (I) of the Jammu & Kashmir Code of Civil Procedure which was applicable at the relevant time. As per this provision, the defendant is obliged to file a written statement within 30 days from the date of service of the summons and if he does not file the written statement within the said period of 30 days, he can be permitted to file the same by the court upto a period of 90 days for the reasons to be recorded in writing.

5. In Rule I of Order VIII of the Jammu & Kashmir Code of Civil Procedure, no consequences for not filing written statement within 90 days of service of the summons upon the defendant have been prescribed. In view of this, the provisions contained in Rule 1 of Order VIII of the Jammu & Kashmir Code of Civil Procedure have been held to be directory in nature. Therefore, a Court can entertain a written statement filed on behalf of the defendants even beyond the period of 90 days from the date of service of the summons. This power can be exercised by the court by taking resort to the provisions contained in Section 148 of the Jammu & Kashmir Code of Civil Procedure.

6. Reverting to the facts of the present case. As per the impugned order, defendant No. 1 had caused his appearance before the court on 25.04.2018 through his counsel and the written statement on behalf of all defendants i.e., defendants No. 1 to 5 was filed on 22.10.2018. It is pertinent to mention here that the counsel for defendant No. 1 filed written statement not only on behalf of defendant No. 1 but he also filed written statement on behalf of defendants No. 2 to 5 as well on the said date, who had not been served by that time. Since there was a joint written statement filed on behalf of defendants No. 1 to 5, as such, to the extent of defendants No. 2 to 5, the written statement had been filed within the prescribed period. It seems that for this reason the learned trial court has taken the written statement filed on behalf of defendants No. 1 to 5 on record.

7. It was only on 12.11.2018 that the plaintiff filed the application before the trial court seeking a direction that the written statement filed on behalf of defendants No. 1 to 5 be taken off the record. A perusal of the interim order dated 22.10.2018 reveals that though the counsel for the plaintiff was present before the trial court, he did not object to the taking on record of the written statement filed by defendants No. 1 to 5. Thus, it can be inferred that the plaintiff had conceded to the grant of deemed extension in filing the written statement. It is only on 12.11.2018 that the plaintiff objected to filing of written statement by defendant No. 1.

8. In the peculiar facts and circumstances of the case and having regard to the fact that the trial court had the power and discretion to enlarge the time for filing the written statement in terms of Section 148 of the Jammu & Kashmir Code of Civil Procedure, the impugned order passed by the learned trial court does not deserve to be interfered with in exercise of revisional jurisdiction of this Court.

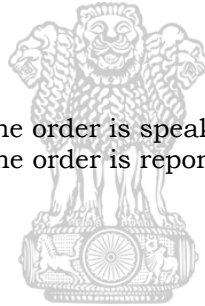
9. For the foregoing reasons, I do not find any merit in this petition and the same is **dismissed**.

JAMMU
06.10.2025

Shivalee

(SANJAY DHAR)
JUDGE

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



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