

Regular List
Serial No. 03

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

CM(M) No. 106/2025
CM No. 2276/2025

Date of pronouncement : 06.06.2026
Uploaded on : 08.06.2026

Nirmal Kanta Verma

.....Petitioner

Through:- Mr. Manik Dutt, Advocate.

Rajiv Abrol

V/s

.....Respondent

Through:- Mr. Ajay Abrol, Advocate.

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
ORDER

01. Upon institution of a civil suit by the petitioner against the respondent, the summons issued for service of the respondent was not served on account of the fact that the respondent at the time of visit of the Process Server was not at home and by purported reference of refusal by his son to accept the summons, the Process Server returned the process attributing the fact that the son of the respondent has refused to take the summons.

02. The Process Server did not carry forward the responsibility of pasting the copy of summons on the conspicuous part of the house of the respondent in the face of purported refusal of son of the respondent to acknowledge the service of summons.

03. Be that as it may, the court of learned Sub-Registrar (Munsiff), Jammu, which then was seized of the *lis*, directed issuance of fresh summons for appearance on **20.10.2023** on which date the defendant came to cause appearance through an Advocate with the submission that copy of the plaint be delivered to him.

04. Accordingly, the court of learned Sub-Registrar (Munsiff), Jammu passed a direction to the said effect unto the plaintiff i.e., the petitioner herein to provide copy of the plaint to the defendant for enabling to file the written statement.

05. This very direction unto the plaintiff for supplying copy of the plaint to the defendant and/or his counsel is an acknowledgement of fact on the part of the plaintiff and/or his counsel that the copy of the plaint and documents had not accompanied the summons which purportedly came to be refused from being taken by the son of the respondent.

06. The requisite copy of plaint is said to have been furnished to the counsel for the defendant on **26.12.2023** whereafter within prescribed period of limitation, the respondent came to file written statement on **09.02.2024** by acting on side of abandoned caution by submitting an application for condonation of delay explaining the time consumption in submitting the written statement on **09.02.2024**.

07. The court of learned Sub-Registrar (Munsiff), Jammu, by virtue of an order dated **23.01.2025**, accepted the plea of the defendant/respondent herein and entertained the written statement on record.

08. Before this Court proceeds further, this Court needs to make an observation here about the casualness on the part of the then Sub-Registrar (Munsiff), Jammu in signing the order impugned which bears two references as to the date of its passing. Head Note date is **23.01.2025**, whereas the bottom level date is **23.01.2024**.

09. The correct date is **23.01.2025** because the written statement was filed on **09.02.2024** meaning thereby it took almost more than one year for the then Presiding Officer of the court of Sub-Registrar (Munsiff), Jammu to *dispose of* an application for condonation of delay and the

petitioner, as a plaintiff, felt no botheration that his suit was suffering delay in terms of adjudication and kept on putting up for proceedings relatable to the condonation of delay plea of the respondent.

10. Be that as it may, this Court is of the view that once having accepted a situation upon himself that copy of the plaint was not provided to the defendant and/or his counsel, the plaintiff and/or his counsel accepted late start of time against the defendant in the matter of filing the written statement which started running only w.e.f. **26.12.2023** when copy of the plaint along with the documents came to be supplied to the defendant and/or his counsel, as such, this Court finds no illegality in the impugned order to warrant any further wastage of time of this Court also with regard to the present petition.

11. Mr. Manik Dutt, learned counsel for the petitioner's emphasis on **S.O. 1123 (E)** of **2020** dated **18.03.2020** passed in exercise of power under **section 96** of the **J&K Reorganization Act, 2019** is misplaced in view of the fact that there is a failure on the part of the civil court seized of the suit to carry out due compliance of **Order V** of the **Code of Civil Procedure, 1908**.

12. The learned counsel for the petitioner when queried by this Court as to from which date onwards he is meaning to count the running of the time against the defendant in filing of the written statement, the learned counsel submits that on **02.09.2023** when the purported refusal came to be reported back by the Process Server.

13. Even if said plea of Mr. Manik Dutt, learned counsel for the petitioner is to be accepted for the sake of arguments, though there is no factual basis for assuming so, but for said plea to receive an acceptance from this Court, the Process Server in his process serving report ought to have then made a reflection of the fact that as to whether the purported service of summons was accompanied by copy of the plaint.

14. The report further does not mention as to whether he read over the entire summons to the son of the defendant and also apprised him that the summons is being accompanied by a copy of the plaint even if the refusal from the son came to take place with respect to service of summons meant for the respondent.

15. The mandate of **Order V rule 17** of the **Code of Civil Procedure, 1908** which required the Process Server to then affix a copy of the summons on the outer door or some

other conspicuous part of the house of the defendant/respondent herein surely did not take place which otherwise would have found a mention in the return report of the Process Server.

16. In fact, mandate of **Order V rule 17** of the **Code of Civil Procedure, 1908** is exactly this that Process Server is to spell out in his return report that upon refusal to acknowledge service of the summons, the Process Server carried out affixation of the copy of the summons on the outer door or the other conspicuous part of the house of the defendant refusing service of the summons.

17. So much so, in the Process Server's report in the present case there is no endorsement in the manner as envisaged by **rule 18 of Order V** of the **Code of Civil Procedure, 1908** as to who is the witness identifying the exercise being carried out by the Process Server in the matter of house identification of the respondent/defendant, identification of the son of the respondent/defendant, identifying the refusal on the part of the son of the respondent/defendant and lastly being a witness to the affixation of the copy of the summons on the outer door of conspicuous part of the house of the respondent/defendant which surely did not take place in the present case. The

Process Server was supposed to then return this process along with his affidavit which in the present case has not taken place.

18. When this Court is exposed to this much number of omissions in the matter of carrying out due service of the respondent, then Mr. Manik Dutt, learned counsel for the petitioner's emphasis on **S.O. 1123 (E)** of **2020** dated **18.03.2020** is nothing but a seriously misplaced plea.

19. This Court is at loss to figure out as to why the petitioner as a plaintiff is more bent upon to get a decree by default by upstaging the written statement of the respondent/defendant on the count of its non-filing within the prescribed period of limitation as being read by the counsel for the petitioner/plaintiff.

20. In the light of the aforesaid, this petition is said to be misconceived and hence **dismissed** along with connected application.

(RAHUL BHARTI)
JUDGE

JAMMU
06.06.2026

Bunty

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No