

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

Reserved on	05.08.2026
Pronounced on	14.08.2026
Uploaded on	14.08.2026

Whether the operative part or full
Judgment is pronounced: **Full**

CM(M) No. 203/2025

Pritam Chand

.....Appellant(s)/Petitioner(s)

Through: Mr. Ved Bhushan Gupta, Adv.
Mr. Rahul Aggarwal, Adv.

vs

Sukh Ram and others

..... Respondent(s)

Through: Mr. RKS Thakur, Adv.
Ms. Anandita Thakur, Adv.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner, through the medium of the present petition filed under Article 227 of the Constitution of India, has assailed the order dated 07.05.2025 passed by the learned Sub Judge (Special Mobile Magistrate), Kathua (for short, 'the trial court') in the suit titled "Pritam Chand vs. Sukh Ram and others", whereby the learned trial court has condoned the delay and granted an opportunity to the defendants/respondents to file their written statement.
2. The order impugned has been assailed by the petitioner primarily on the ground that, despite the fact that respondent Nos. 2, 7, 8, 9, 10, 11, 12 to 14 were served on 06.11.2023 and caused their appearance before the learned trial court on 22.11.2023, they did not file their written statement within the prescribed period. They were under an obligation to file the written

statement on or before 06.12.2023. However, they filed the application seeking condonation of delay in filing the written statement only on 24.03.2024, i.e., 105 days after the expiry of 30 days and 15 days even after the expiry of 120 days. It is contended that, in view of the amendment made to Order VIII Rule 1 of the CPC, the respondents could have filed the written statement only within 120 days from the date of their service and, as such, the order impugned is contrary to the mandate of Order VIII Rule 1 CPC and deserves to be set aside.

3. Learned counsel for the petitioner has reiterated the grounds made in the petition.
4. Per contra, Mr. RKS Thakur, learned counsel for the defendants/respondents, has submitted that the learned trial court has rightly passed the order impugned, as a perusal of the order dated 22.11.2023 would reveal that a copy of the plaint was furnished to the learned counsel appearing for all the defendants, other than respondent Nos. 3 and 13, only on the said date. It clearly shows that the contesting respondents were not served with copies of the plaint earlier and, as such, there was no valid service of the aforesaid defendants at all.
5. Heard learned counsel for the parties and perused the record, including the proceedings of the learned trial court.
6. In order to appreciate the controversy involved in the present case, it is appropriate to extract Order V Rules 1 and 2 and Order VIII Rule 1 of the CPC, which read as under:

“Order V Rule1 and 2

Summons:-[(1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any,

within thirty days from the date of service summons on that defendant;

Provided that no such summons shall be issued when a defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on right to file the written statement and the court shall not allow the written statement to be taken on record.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear-

- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
- (c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

Rule 2 Copy of the plaint annexed to summons-Every summon shall be accompanied by a copy of the plaint.

Order VIII Rule1

[1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

[Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.]”

7. In accordance with Order V, Rule 1 of the Code of Civil Procedure, upon the due institution of a suit, summons may be issued to the defendant to appear, answer the claim, and file a written statement of defence within thirty days from the date of service of such summons. Furthermore,

pursuant to Order V, Rule 2 CPC, every summons must be accompanied by a copy of the plaint.

8. A conjoint reading of Order V Rule 1 and 2 and Order 8 Rule 1 CPC would reveal that the defendant has to file the written statement within 30 days from his service and if he fails to file the same within the said period of 30 days, he can be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing and on the payment of such costs as the Court deems fit, which shall not be later than 120 days from the date of service of the summons. Upon expiry of 120 days from the date of service of summons, their right to file the written statement shall stand forfeited.
9. Furthermore, pursuant to Order V, Rule 2 of the Code of Civil Procedure, every summons must be accompanied by a copy of the plaint. The primary objective of issuing summons is to notify the defendant to enter an appearance before the Court, either personally or through an authorized representative, and present his defense. Correspondingly, the statutory requirement to annex the plaint ensures that the defendant is fully informed of the specific claims and cause of action he is called upon to respond.
10. The Hon'ble Supreme Court in **Nehar Enterprises v. Hyderabad Allwyn Ltd, (2007) 9 SCC 466** has held that when a summon is sent calling upon a defendant to appear in the court and file his written statement, it is obligatory on the part of the Court to send a copy of the plaint and other documents appended thereto, in terms of Order V Rule 2 of the CPC. In absence of a copy of plaint and other documents, the defendant would be unable to file his written statement. In “**National Insurance Co. Ltd. v.**

M/S National Building Construction India Ltd. & Ors.”, 2023 Live Law (SC) 800, it has been observed by the Hon’ble Apex Court that service contemplated under Order V Rule 2 of the Court would imply service of summons along with copy of the plaint.

11. Now, it is to be seen as to whether the aforesaid defendants were served on 06.11.2023 as stated by the petitioner/plaintiff or not. The record depicts that on 31.10.2023, the office was directed by the learned trial court to issue summons to the defendants. On 22.11.2023, Rakesh Sharma Advocate and Gulveena Koushal Advocate filed vakalatnama on behalf of all the defendants/respondent except defendants/respondents No. 3 & 13 and the copy of the plaint was provided to them. They sought time to file written statement. On 20.03.2024, defendant/respondent Nos. 2, 7, 8, 9, 10, 11, 12 and 14 filed an application for condoning the delay in filing the written statement, which was allowed in terms of impugned order dated 07.05.2025 with an observation that the period of limitation shall be computed from the day when the copy of the plaint was provided to the aforesaid defendants.
12. Upon perusal of the trial court record, this Court finds no material to demonstrate that summonses were ever issued to the defendants in accordance with Order V, Rule 1 read with Rule 2 of the Code of Civil Procedure. Rather, the record depicts that the order dated 01.11.2023 passed in the application for grant of interim relief was forwarded to Nazir JMIC, Billawar and the aforesaid defendants in fact were served only with the copy of the order dated 01.11.2023. Although the process server stated that a copy of the plaint was provided to the defendants, the endorsement to that effect appears to be an interpolation. Furthermore, the statement is

completely silent as to whether summonses were ever duly served upon the said defendants. The service of the order dated 01.11.2023 upon the defendants constituted statutory compliance with the proviso to Order XXXIX Rule 3 of the Code of Civil Procedure. Non-compliance with this mandatory requirement would have disentitled the plaintiff from maintaining contempt proceedings against the defendants in the event of a breach of the ex-parte interim injunction. Rather, the order dated 22.11.2023 records that the copy of the plaint was provided to the learned counsel for the defendants/respondents other than defendant Nos. 3 and 13 and this substantiates the contention of the defendants/respondents that they were not served with the copy of plaint on 06.11.2023. Learned trial court has rightly observed that the written statement has been filed within the period of limitation.

13. In view of the above, this Court does not find any reason to show indulgence. Accordingly, the present petition is dismissed.

(RAJNESH OSWAL)
JUDGE

Jammu
14.08.2026
Rakesh PS

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