

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

CM(M) No. 291/2025

Sudershan Gupta

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

Through: Mr. Ajay Kotwal, Adv.

vs

Sanji Ram

..... Respondent(s)

Through: Mr. M. Y. Akhoon, Adv. vice
Mr. F. A. Natnoo, Adv.

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

ORDER

18.09.2026

1. The petitioner, through the medium of present petition, has challenged order dated 29.07.2025 passed by the Court of learned Munsiff(District Mobile Magistrate(T), Kathua (hereinafter to be referred as the trial court), whereby the written statement filed by the respondent has been taken on record by condoning the delay in filing the same.
2. I have heard learned counsel for the parties and perused the record, including the record of the trial court.
3. It appears that the petitioner has filed a suit for permanent prohibitory injunction against the respondent/defendant before the learned trial court. A perusal of the record would show that summons of the suit was issued to the defendant/respondent on 31.10.2023 seeking appearance before the Court on 06.02.2023. The said summons was returned unserved with the report that the defendant was not found present at his

residence. Thereafter, fresh summons was issued to the defendant on 20.12.2023 and the same was served upon the defendant by the Process Server of the court on 08.01.2024. The date of appearance of the defendant/respondent before the Court was fixed as 22.01.2024.

4. A perusal of the minutes of the proceedings of the trial court would reveal that when the case was taken up by the court on 22.01.2024, the defendant did not put in his appearance and the case was adjourned to 08.02.2024 for awaiting his appearance. Due to gazetted holiday on 08.02.2024, the case was taken up by the trial court on 09.02.2024. On the said date also, no one appeared on behalf of the respondent/defendant. On the next date i.e. on 23.03.2024, learned Presiding Officer was not present in the court as such, the matter was adjourned to 06.05.2024. On the said date, the defendant entered his appearance through his counsel, who was provided with copies of annexures to the plaint against proper receipt, whereafter he sought time to file the written statement. On 11.07.2024, the plaintiff/petitioner filed an application seeking an order that right of the defendant/respondent to file written statement be closed on the ground that the prescribed time period had expired. On the next date i.e. on 20.07.2024, the defendant filed his written statement along with an application seeking condonation of delay in filing the written statement.
5. By virtue of impugned order dated 29.07.2025, the learned trial court has condoned the delay in filing the written statement and the written statement filed by the respondent/defendant has been taken on record.

6. The petitioner has challenged the impugned order on the grounds that the service of the defendant has been effected on 08.01.2024, whereas the written statement has been filed by the respondent on 20.07.2024. It has been contended that in terms of the provisions contained in Proviso to Rule 1 of Order VIII of the Code of Civil Procedure (for short the Code) as applicable to the Union Territory of Jammu and Kashmir, the written statement cannot be taken on record, if it is filed later than 120 days from the date of service of the summons in any circumstances whatsoever. Therefore, it was not open to the learned trial court to condone the delay in filing the written statement.
7. In the present case, as already stated, the summons was served upon the defendant/respondent on 08.01.2024. However, a perusal of the record would show that along with the summons, copy of the plaint and the documents annexed to the plaint in the shape of Annexures A and B were not served upon the defendant/respondent. In the summons, copy whereof is available on record, it is nowhere recorded that the same was accompanied by the copy of the plaint and annexures.
8. Rule 2 of Order 5 of the Code makes it mandatory that every summons should be accompanied by a copy of the plaint and the documents annexed with the same. The service of the summons upon the defendant/respondent without providing him copy of the plaint and annexures is not a proper service. In absence of the copy of the plaint and other documents, the defendant would not be able to file written statement.

9. In the report of the Process Server, it is not mentioned that the copy of the plaint or annexures has been provided to the defendant. It is only for this reason that the defendant, upon his appearance before the trial court on 06.05.2024 through his counsel, sought copies of annexures, which were provided by the learned counsel for the plaintiff/petitioner to him in the open court on the said date. Thus, it can safely be stated that the defendant/respondent was properly served of the summons of the suit only on 06.05.2024 and not on 08.01.2024 when he received the summons without copy of the plaint and the annexures.
10. The time for filing the written statement in the present case would therefore, start running against the respondent/defendant from 06.05.2024. The written statement has been filed by the defendant on 20.07.2024 after a period of about 75 days of his proper service. Proviso to Rule 1 of Order VIII of the Code vests power with the Court to condone the delay in filing the written statement, if the same has not been filed within the initial period of 30 days and this delay can be condoned, upto a period of 120 days. In the present case, the learned trial court has exercised its discretion of condoning the delay beyond 30 days by virtue of impugned order dated 29.07.2025 and taken the written statement filed by the defendant/respondent on record. The discretion exercised by the learned trial court, in the facts and circumstances, does not call for any interference from this Court in exercise of its power under Article 227 of the Constitution.

11. From the foregoing discussion, it is clear that the rigors of Proviso to Order VIII Rule 1 of the Code as applicable to the Union Territory of Jammu and Kashmir, are not attracted to the present case, because the defendant/respondent was not properly served when he received the summons on 08.01.2024. The impugned order passed by the learned trial court is perfectly in accordance with law and the same does not suffer from any illegality and impropriety.
12. For the foregoing reasons, I do not find any merit in the instant petition. Accordingly, the same is dismissed.

Jammu
18.09.2026
Rakesh PS

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

(SANJAY DHAR)
JUDGE