

2026:PHHC:095709



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

204

CR-5326-2026 (O&M)
Date of decision: 14.07.2026

Om Parkash

...Petitioner

Versus

Kamla

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Aakash Dalal, Advocate for the petitioner.

VIKAS SURI, J.

1. The present revision petition has been filed by the defendant-petitioner (Om Parkash) under Article 227 of the Constitution of India, for setting aside the impugned order dated 06.05.2026 (Annexure P-8), passed by the learned Civil Judge (Junior Division), Kharkhoda, whereby the defence of the defendant-petitioner has been struck off.

2. Learned counsel for the petitioner submits that the plaintiff-respondent filed a suit for permanent injunction under Section 38 of the Specific Relief Act, in respect of the suit property measuring 7K-7M situated at Village Pipli, Tehsil Kharkhoda, District Sonapat. The said suit was instituted on 03.12.2024. Petitioner put in appearance along with his counsel on 06.02.2025 and the matter was deferred for filing written statement. The matter was adjourned on 4/5 occasions, thereafter. The lawyers abstained from work on 21.01.2026 and the proceedings were further adjourned to 06.05.2026. It is on the said



hearing that the trial Court observed that the defendant-petitioner has availed sufficient opportunities to file the written statement but the same had not been done so far. Resultantly, the defence of the defendant was struck off vide order dated 06.05.2026 (Annexure P-8).

3. The impugned order dated 06.05.2026 has been assailed by way of the present petition, filed by the defendant-petitioner.

4. Learned counsel for the petitioner submits that the petitioner is a senior citizen and does not generally keep good health but has nonetheless been diligently pursuing the case. It is further submitted that the timeline stipulated in the Code of Civil Procedure, 1908 (for short 'CPC'), for filing written statement is directory and not mandatory. Therefore, a prayer is made for grant of one opportunity to file the written statement. Learned counsel for the petitioner further submits that the written statement is ready with him and if permitted, the same shall be filed on the date already fixed before the trial Court. Learned counsel for the petitioner has placed reliance upon the decision in ***Desh Raj vs. Balkishan (Dead) through Proposed Legal Representative Ms. Rohini, (2020) 2 SCC 708***, to urge that the provisions of Order 8 Rule 1 CPC have been held to be directory in nature. It is further submitted that the written statement could not be filed earlier owing to the ill health of the defendant-petitioner and he would refer to the medical record appended as Annexure P-9 with the petition.

5. I have heard learned counsel for the petitioner and have carefully perused the impugned order and the material placed on record,



with his able assistance.

6. The interlocutory orders passed in the suit since 06.02.2025 till the passing of the impugned order dated 06.05.2026 have been appended with the petition as Annexures P-2 to P-8.

7. Perusal of the interlocutory orders passed by the trial Court would show that sufficient opportunities were afforded to the petitioner at every stage, to file his written statement. Vide order dated 01.04.2026, last opportunity was granted for filing the written statement, subject to costs of Rs.500/-. It is notable that on a date prior thereto, i.e. on 21.01.2026, the Lawyers were abstaining from Court work and proxy counsel had appeared on behalf of the parties.

8. A further perusal of the medical record of the petitioner, appended as Annexure P-9, would show that the same pertains only to the year 2025 and last of the said record is dated 08.10.2025. In view of the above, this Court is not impressed with the aforesaid ground, which appears to have been taken as a lame excuse, justifying the casual approach of the defendant, in not filing the written statement within the time stipulated by the rules of procedure. Order 8 Rule 1 CPC casts an obligation upon the defendant to file the written statement within 30 days from the date of him being served or within the extended time, but not later than 90 days from the date of service of summons. A perusal of the interlocutory orders would show that on being served, the defendant-petitioner had put in appearance on 06.02.2025 and 90 days therefrom had long since lapsed.



9. In ***Desh Raj vs. Balkishan (Dead) through Proposed Legal Representative Ms. Rohini, (2020) 2 SCC 708***, a three Judge Bench of the Hon'ble Supreme Court had also examined the timeline for filing of written statement and laid down that in a non-commercial dispute matter, the unamended provision of Order 8 Rule 1 CPC continues to be directory and does not do away with the inherent discretion of the Courts to condone delay.

10. In ***Bharat Kalra vs. Raj Krishan Chhabra, 2022 SCC Online 613***, and while placing reliance upon ***Kailash vs. Nanko and others, (2005) 4 SCC 480***, the Apex Court held that the provision of Order 8 Rule 1 CPC is not mandatory and the delay in filing of written statement could very well be compensated with costs, but denying the benefit of filing the written statement is unreasonable.

11. Concededly, the petitioner availed several opportunities to file the written statement after being served and has approached this Court only after passing of the impugned order, whereby his defence was struck off, but before the adjourned date that was fixed thereafter, for evidence of the plaintiff.

12. In the light of the above and the law laid down by the Apex Court, I am of the view that ends of justice would be adequately met if the delay in filing written statement is condoned and one opportunity is granted to the petitioner for filing his written statement, on the date already fixed before the learned trial Court. No prejudice would be caused to the other side in case the suit is decided on merits, after



affording due opportunity to contest the same. It is settled law that the procedural law is always subservient to and is in aid of justice.

13. No material has been placed on record to show that the defendant-petitioner could not file the written statement even in the year 2026, till the passing of the impugned order, on account of his ill health. A perusal of Annexure P-9 reflects that no treatment has been shown to have been taken in the year 2026. However, it is well settled law that the Courts are in favour of a decision on merits, after due contest and the plaintiff-respondent can be adequately compensated by payment of costs. In the present case, the delay is not such that cannot be atoned by imposing costs.

14. Accordingly, the present revision petition is allowed. The impugned order dated 06.05.2026 (Annexure P-8) is set aside, subject to payment of Rs.20,000/- as costs, to be paid to the plaintiff-respondent; and one opportunity is granted to the defendant-petitioner to file his written statement as well as reply to the injunction application on the date fixed before the learned trial Court. It is made clear that failing to file the written statement or to pay costs in terms of this order, the defendant-petitioner would not be entitled to any further opportunity for the said purpose and the trial Court would proceed with the matter without this order having any bearing on the trial.

15. As the present revision petition is being disposed of in the absence of the plaintiff/respondent, liberty is granted to her to seek recall of this order, if valid grounds for the same are made out.



16. The revision petition is disposed of in the aforesaid terms.

July 14, 2026
sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No