



2026:UHC:3127

HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Revision No. 03 of 2026

Dated : 24th April, 2026

Aarti Kothiyal and others -----Revisionists/defendants

Versus

Smt. Dayawati Sharma and others --Respondents/Plaintiffs

Presence:-

Mr. Ramji Srivastava, learned counsel for the revisionists.

Mr. Tarun Lakhera, learned counsel for the respondents.

Hon'ble Mr. Subhash Upadhyay, J.

1. The present Revision has been filed by the revisionists/defendants assailing the order dated 24.10.2025, passed by learned Small Cause Court Judge/ Vth Additional District Judge, Dehradun in SCC Suit No. 87 of 2024, Smt. Dayawati Sharma and others, vs. Aarti Kothiyal and others, whereby the learned Court has allowed the application no. 20C and 27C filed by the plaintiff/respondents consequent to which, the right to defend the case of the defendant/revisionist has been closed and the written statement is held to be non-readable.
2. Learned counsel for the revisionists and counsel for the respondents submit that the present revision may be heard and decided at the admission stage itself and with the consent of learned counsel for the parties, the revision is being heard and decided at the admission stage.
3. Learned counsel for the revisionists submits that the respondents/plaintiffs filed a SCC Suit No. 87 of 2024, in the Court of Small Cause Court Judge/ Additional



District Judge, Vth, Dehradun seeking prayer of eviction and arrears of rent. It was contended by the plaintiffs therein that they had inherited the property situated at 51 Ghosi Gali, Dehradun from Late Devendra Viajy Sharma (husband of respondent no.1); that the plaintiffs/respondents being landlord put on rent the first floor of the property situated at 51, Ghosi Gali, Dehradun for residential purpose to one Shri K.P.Kothiyal and his wife Smt. Godambari Devi (in-laws of the revisionist no.1) @ 255 rupees per month; that in September, 2016, Smt. Godambari Devi met with the sad demise and after that present revisionist along with her husband, Surendra Kothiyal started living in the present suit property; that the rent was not paid after September, 2016; that thereafter, on 30.04.2021 Surender Kothiyal died and being legal heirs present revisionists got inherited the tenancy in continuation; that after sending notice under Section 106 of the Transfer of Property Act the respondents filed the aforesaid SCC Suit against the revisionist for arrears of rent as well as eviction.

4. Learned counsel for the revisionists submits that the aforesaid suit was filed on 07.11.2024 and while issuing summons to the revisionists, the next date was fixed for final arguments on 19.12.2024 and further the next date for final arguments was fixed as 01.02.2025.
5. Learned counsel for the revisionists submits that on 01.02.2025, Shri R.K.Gupta, Advocate, had put his appearance on their behalf, however due to the illness of the counsel, the written statement could not be filed within time, however the written statement was filed in



the month of July, 2025, as such, there was no inordinate delay in filing the written statement and the application for condonation of delay in filing the written statement was to be allowed at some cost. He further submits that by the impugned order, the right of defence of the revisionists has been struck off and case has been directed to be proceeded *ex parte*, which has seriously prejudiced the rights of the revisionists.

6. *Per contra*, learned counsel for the respondents submits that though the revisionists were required to deposit the entire rent or compensation for use and occupation on the date of first hearing i.e. on 19.12.2024, however, neither the rent was deposited nor any application for condonation of delay in filing the written statement was filed at the time of submission of the written statement in July 2025. He thus submits that as per Order 15 Rule 5 C.P.C., the learned Additional District Judge had rightly struck off the defence of the revisionists.
7. Learned counsel for the respondents however does not dispute that it is not a case where inordinate delay was caused in filing the written statement.
8. Order 15 Rule 5 C.P.C. reads as under:

“O.15,R.5 CPC provides that5. Striking off defence on failure to deposit admitted rent, etc.– (1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine percent per annum and whether or not he admits any amount to be due, he shall throughout the continuation



of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the court may subject to the provisions of sub rule (2), strike off his defence.

Explanation 1- The expression ‘first hearing’ means the date for filing written statement or for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2- The expression ‘entire amount admitted by him to be due’ means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any paid to a local authority in respect of the building on lessor’s account (and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him) and the amount, if any, deposited in any Court under Section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

Explanation 3.(1) The expression ‘monthly amount due’ means the amount due every month whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor’s account.

(2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in sub-section (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff: Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited.

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such some



before he is allowed to withdraw the same.”

9. Thus, the defence of the defendants can be struck off by the Court but before striking off the defence, the Court may consider the representation made by the defendants in that behalf, provided the same is made within 10 days of first hearing or of the expiry of the week referred to in sub -section (1), as the case may be.
10. In the present case, although the revisionists had put in appearance through counsel on 01.02.2025 but the written statement could not be filed within time and the delay occurred due to the ill health of the counsel for the revisionists. Striking off the defence of the revisionists has caused serious prejudice and as the case was filed only on 07.11.2024, as such, it cannot be said that the said delay was inordinate. The reason provided for the delay was ill health of the Advocate, as such, in the peculiar facts and circumstances of the case, the written statement ought to have been taken on record by imposing some costs.
11. The Hon’ble Apex Court in the case of Bimal Chand Jain vs. Sri Gopal Agarwal, 1981 (3) SCC 486 while considering Rule 5 of Order XV of C.P.C. observed that striking off the defence is in the nature of penalty and in para 6 of the judgment held as under:-

“6. It seems to us on a comprehensive understanding of Rule 5 of Order 15 that the true construction of the Rule should be thus. Sub-rule (1) obliges the defendant to deposit, at or before the first hearing of the suit, the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and further, whether or not he admits any amount to be due, to



deposit regularly throughout the continuation of the suit the monthly amount due within a week from the date of its accrual. In the event of any default in making any deposit, “the court may subject to the provisions of sub-rule (2) strike off his defence”. We shall presently come to what this means. Sub-rule (2) obliges the court, before making an order for striking off the defence to consider any representation made by the defendant in that behalf. In other words, the defendant has been vested with a statutory right to make a representation to the court against his defence being struck off. If a representation is made the court must consider it on its merits, and then decide whether the defence should or should not be struck off. This is a right expressly vested in the defendant and enables him to show by bringing material on the record that he has not been guilty of the default alleged or if the default has occurred there is good reason for it. Now, it is not impossible that the record may contain such material already. In that event, can it be said that sub-rule (1) obliges the court to strike off the defence? We must remember that an order under sub-rule (1) striking off the defence is in the nature of a penalty. A serious responsibility rests on the court in the matter and the power is not to be exercised mechanically. There is a reserve of discretion vested in the court entitling it not to strike off the defence if on the facts and circumstances already existing on the record it finds good reason for not doing so. It will always be a matter for the judgment of the court to decide whether on the material before it, notwithstanding the absence of a representation under sub-rule (2), the defence should or should not be struck off. The word “may” in sub-rule (1) merely vested power in the court to strike off the defence. It does not oblige it to do so in every case of default. To that extent, we are unable to agree with the view taken by the High Court in *Puran Chand* [Civil Revision No. 356 of 1978, decided on October 30, 1980] . We are of opinion that the High Court has placed an unduly narrow construction on the provisions of clause (1) of Rule 5 of Order XV.”

12. Thus, the question as to whether the defence is to be struck off depends on the facts and circumstances of



the case and also as to whether there was any inordinate or deliberate delay in filing the written statement. In the present case the revisionist had provided cogent reasons for delay in filing the written statement and the delay was also not so inordinate and the same was due to the ill health of the advocate.

13. Looking into the peculiar facts and circumstances of the case, the Court is of the view that the revisionists application for condonation of delay ought to have been considered as the same has resulted in serious prejudice and the delay was liable to be condoned. In view of the above, the order dated 24.10.2025, passed by learned Small Cause Court Judge/ Vth Additional District Judge, Dehradun in SCC Suit No. 87 of 2024, Smt. Dayawati Sharma and others, vs. Aarti Kothiyal and others is set aside. The revision is finally disposed of with the following directions:

- (i) Revisionists shall deposit the entire amount admitted by him to be due with interest thereon at the rate of 9% per annum as provided in Order XV Rule 5 of C.P.C., before the learned Trial Court on or before 10th May, 2026 and shall continue to deposit the rent on monthly basis.
- (ii) Revisionists shall pay cost of Rs. 2500/- to the respondents, and on payment of such costs, the written statement of the revisionists shall be taken on record.
- (iii) The revisionists shall not take unnecessary adjournments and learned Trial Court shall make an endeavour to decide the suit as expeditiously as possible.



2026:UHC:3127

- (iv) In case of default of the above condition nos. 1 & 2, the revisionists shall not be entitled for any relief and the trial court would proceed against the revisionists as per law

(Subhash Upadhyay, J.)

24.04.2026

Kaushal