HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 10848/2018
URN: CW / 17788U / 2018

Kamlesh Agarwal Son Of Shri Chhuttan Lal Agarwal, Resident Of 65, Surya Nagar, Taro Ki Koont, Tonk Road, Jaipur.

----Petitioner

Versus

1. M/s Chhuttan Lal Agarwal Through Partner Babu Lal Gupta Son Of Shri Chhutan Lal Agarwal, Shopkeeper Shop No. C-10, Krishi Upaj Mandi, Muhana Sanganer, Jaipur And Resident Of Plot No. 141, Himmat Nagar, Tonk Road, Jaipur.
2. Chhuttan Lal Agarwal Son Of Late Shri Raghunath Agarwal, Partner M/s Chhuttan Lal Agarwal, Shopkeeper, Shop No. C-10, Krishi Upaj Mandi, Muhana, Sanganer, Jaipur And Resident Of Plot No. 141, Himmat Nagar, Tonk Road, Jaipur.(Deceased)
3. Mahatama Jyoti Phoole Krishi Upaj Mandi Samitee Phal And Sabji, Terminal Market, Muhana, Sanganer, Jaipur Through Secretary.

----Respondents

Connected With

S.B. Civil Writ Petition No. 4865/2026
URN: CW / 10656U / 2026

Kamlesh Agarwal, Son Of Late Shri Chhuttan Lal Agarwal, Aged About 54 Years, Resident Of P.no. 65 Suriya Nagar, Taron Ki Koot, Tonk Road, Jaipur.

----Petitioner

Versus

1. M/s Chhuttan Lal Agarwal, Through Partner Babu Lal Gupta, Son Of Shri Chhuttan Lal Agarwal, Age About 68 Years, Shopkeeper, Shop No. C-10, Krishi Upaj Mandi, Muhan, Sanganer, Jaipur And Resident Of P.no. 141, Himmat Nagar, Tonk Road, Jaipur.
2. Chhuttan Agarwal, Son Of Late Shri Raghunath Das Agarwal, Aged About 92 Years, Partner M/s Chhuttan Lal Agarwal, Shopkeeper, Shop No. C-10, Krishi Upaj Mandi,

Muhana, Sanganer, Jaipur And Resident Of P.no. 141, Himmat Nagar, Tonk Road, Jaipur. (Deceased)

3. Mahatama Jyoti Phoole Krishi Upaj Mandi, Samiti (Fruit And Vegetable), Terminal Market, Muhana, Sanganer, Jaipur, Through Secretary.

----Respondents

For Petitioner(s)	:	Mr. Chandra Shekhar
For Respondent(s)	:	Mr. GP Sharma Mr. Mahesh Chand Gupta Ms. Deepa Singh for Ms. Manju Joshi

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HON'BLE MR. JUSTICE SUDESH BANSAL

Order

03/07/2026

1. Miscellaneous application (IA No.1/2026) field in S.B. Civil Writ Petition No.10848/2018, seeking to add "deceased" against the name of respondent No.2-Chuttan Lal Agarwal in the cause title, is allowed. Amended cause title filed by counsel for petitioner is taken on record.

2. Issue involved in both writ petitions is in respect of closing the right to file written statement by petitioner-defendant No.2 and declining to grant further opportunity.

3. Vide order dated 20.04.2018, impugned in S.B. Civil Writ Petition No.10848/2018, right to file written statement of petitioner was closed and vide order dated 25.08.2025, impugned in S.B. Civil Writ Petition No.4865/2026, application seeking to grant an opportunity to file written statement came to be dismissed.

4. Heard counsel for both parties and perused the impugned order so also the record.

5. It appears that respondent-plaintiff- M/s Chuttan Lal Agarwal through its partner filed a civil suit, seeking declaration of a registered gift deed dated 18.08.2015 as null and void so also to quash the entries made in the name of petitioner-defendant No.2 in the record of Mahatama Jyoti Phoole Krishi Upaj Mandi, Samiti based on that gift deed. The gift deed was made in favour of petitioner, who has been impleaded as defendant No.2 therein.

6. It appears that petitioner-defendant No.2, on the date of his appearance before trial Court, moved an application under Order 2 Rule 2 CPC raising a preliminary objection that the cause of action in the present suit is similar to that of the previous suit, hence, this suit is barred. This application came to be dismissed on merits by the trial Court vide order dated 20.04.2018, but simultaneously, in the same order, right to file written statement of petitioner-defendant No.2, to the present suit, has also been closed, due to expiry of period of 90 days from date of appearance of defendant No.2.

7. It appears that thereafter right to file written statement by defendant No.3 (respondent No.3 herein) was also closed due to expiry of period of 90 days, but later on trial Court granted an another opportunity to defendant No.3 to file written statement on cost of Rs.5,000/- and its written statement has been taken on record belated.

8. Then, petitioner-defendant No.2 again filed application to grant him as well, an opportunity to file written statement but his application has been dismissed by trial Court vide order dated 25.08.2025.

9. In both the impugned orders, trial Court has not noted any deliberate or willful negligence on part of defendant No.2 for not filing written statement, but he was declined opportunity only for the reason that period of 90 days from his appearance has expired.

10. It is well established proposition of law that a period of 90 days as provided under Order 8 Rule 1 CPC to file written statement is not mandatory, but has been considered as directory in nature as has been held time and again by the Hon'ble Supreme Court. The reference of two judgments in cases of **Kailash Vs. Nanhku & Ors. [(2005) 4 SCC 480],** which has been further reiterated in **Atcom Technologies Limited V. Y.A. Chunawala and Company & Ors. [(2018) 6 SCC 639]**, would be suffice instead of multiplying the proposition of law by other several judgments.

11. Having heard counsel for both parties and considering the nature of civil suit, stated to pending at the stage of plaintiff's evidence and the manner in which the right to file written statement of petitioner-defendant No.2 has been closed, this Court finds it just, reasonable and in the interest of Justice to grant an opportunity to the petitioner-defendant to submit his written statement, subject to payment of cost of Rs.10,000/- to the plaintiff.

12. Accordingly, the writ petitions stand allowed. Impugned orders are set aside.

13. Petitioner-defendant No.2 is permitted to file written statement on the next date or on any date as fixed by the trial

Court, subject to payment of cost of Rs.10,000/-, which shall be paid in advance to the respondent-plaintiff through his counsel.

14. After filing of written statement, the trial Court is expected to proceed with the trial in the present civil suit in expedite manner and in accordance with law.

15. All pending application(s), if any, stand(s) disposed of.

(SUDESH BANSAL),J

RONAK JAIMAN/34&35