



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4354 OF 2026**

Prakash Prabhakar Khambekar and Anr. ... Petitioners
versus
Poonam Bharat Salunkhe and Ors. ... Respondent

Mr. Sandeep Mishra with Ms. Madhura Mulaye, for Petitioners.

CORAM: N.J.JAMADAR, J.

DATE : 4 MAY 2026

ORAL ORDER :

1. Heard the learned Counsel for the Petitioners.
2. The challenge in this Petition is to an order dated 11 August 2025 passed by the learned Civil Judge, whereby an application preferred by the Petitioners to set aside 'no written statement order' dated 4 January 2022, came to be rejected.
3. Learned Counsel for the Petitioners submits that the written statement could not be filed within the stipulated period on account of the disruptions caused by the Covid 19 Pandemic, and the death of the husband of Defendant No.2.
4. Learned Civil Judge was persuaded to reject the application as the writ of summons was served on the Defendants in the month of January 2020 and the Vakalatnama was filed on behalf of the Defendants on 17 January 2020. The Application for setting aside the "no written statement order" was filed on

17 July 2023. In the application for setting aside the no written statement order, and seeking permission to file the written statement, the Defendants contended that the Defendants could not file the written statement due to their domestic personal problems. The delay was not deliberate and intentional.

5. Undoubtedly, the provisions contained in Order VIII Rule 1 of the Code of Civil Procedure, 1908, have been construed to be directory. Yet, the provisions cannot be so construed as to defeat the very object behind prescribing the time limit for filing the written statement. When the Defendant seeks permission to file written statement beyond the stipulated period, the Defendant is expected to furnish justifiable reasons for the delay.

6. In the instant case, the only reason which can be discerned from the application is that, the written statement could not be filed due to domestic personal problems in the family of the Defendants. Even the fact that the husband of Defendant No.2 had passed away, and, therefore, there was delay in filing the written statement was not mentioned in the application. True, there were disruptions on account of the Covid-19 Pandemic. However, the period of delay is such that, even if the Covid-19 Pandemic period is excluded, the reasons ascribed in the application do not furnish a sufficient cause for not filing the written statement within the stipulated period. No justifiable reason is forthcoming. A bald and general assertion is made that due to domestic personal problems in the family of Defendants, written

statement could not be filed.

7. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **M/s. R.N.Jadi and Bros. And Ors. V/s. Subhashchandra**¹, wherein the Supreme Court has emphasised that the delay in filing the written statement cannot be condoned as a matter of course. The observations in para Nos.14 and 15 read as under :

“14. It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock-outs. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in *Kailash vs. Nankhu*² which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigor of that provision or to mitigate genuine hardship. It was in that context that in *Kailash vs. Nankhu* (supra) it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by

1 (2007) 6 SCC 420

2 (2005) 4 SCC 480

the Code and the power inhering in the court in terms of Section 148 of the Code. Kailash is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

15. dispensation that makes Order VIII Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasize that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order VIII Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in *Allen V/s. Sir Alfred Mcalpine and Sons*³ that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that

3 (1968) 2 QB 229

state of affairs continue for all times ?”

8. In the instant case, the Petitioners have failed to make out a sufficient cause for not filing the written statement within the stipulated period of time. Thus, the learned Civil Judge has not committed any error in passing the impugned order.

9. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)