IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 568 of 2026
Decided on : 02.11.2026

Ajay Sharma ...Petitioner

Versus

Jaypee University of Information Technology ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1]

For the petitioner : Mr. Neel Kamal Sharma, Advocate.

For the respondent : Mr. Vipin Pandit, Advocate.

Virender Singh, Judge (Oral)

Power of attorney filed.

2. Service complete.

3. Petitioner-Ajay Sharma, has filed the present petition under Article 227 of the Constitution of India, against the order dated 25.05.2026, passed by the Court of learned Civil Judge, Kandaghat, District Solan, H.P. (hereinafter referred to as 'the learned trial Court'), in Civil Suit No. 73K/1 of 2024, titled as 'Jaypee University Vs Ajay Sharma'.

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

4. By way of the order dated 25.05.2026, the learned trial Court has closed the right of the petitioner to file written statement, in the above titled suit.

5. For the sake of convenience, the parties to the present *lis,* are, hereinafter referred to, in the same manner, as were, referred to, by the learned trial Court.

6. Brief facts leading to the filing of the present petition, before this Court, as borne out from the documents annexed with the petition, may be summed up, as under:-

6.1 Plaintiff-Jaypee University, through its Registrar and Dean, has filed a suit for recovery of Rs. 6,20,764/- along with future interest at the rate of 12.5% per annum, till the date of full and final payment of costs, against the defendant.

7. When put to notice, defendant had put appearance and thereafter obtained number of opportunities to file written statement. Ultimately, the learned trial Court has closed the right of the defendant to file the written statement, vide order dated 25.05.2026.

8. Now the defendant is before this Court, against the said order.

9. The provisions of Order 8 Rule 1 CPC have been held to be directory, by Hon'ble Supreme Court in **Kailash Vs Nanhku and others, (2005) 4 SCC 480**. Relevant paragraph 45(iv), of the judgment, is reproduced as under:

> *"The purpose of providing the time schedule for filing the written statement under Order VIII Rule 1 of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 of Order VIII of the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order VIII Rule 1 of the CPC is not completely taken away."*

10. Similar view has again been reiterated by the Hon'ble Supreme Court in **Bharat Kalra Versus Raj Kishan Chabra, 2022 LiveLaw (SC) 465**. Relevant paragraphs 3 to 5 of the judgment, are reproduced, as under:-

> *"3. Admittedly, the suit for injunction filed by the plaintiff is not the one which is governed by the Commercial Court Act, 2015. Therefore, the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory in view of the judgment of this Court reported as **'Kailash V. Nankhu & Ors.'** reported in **(2005) 4 SCC 480**.*
>
> *4. In view of the aforesaid judgment, we find that the delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing of the written statement is unreasonable.*
>
> *5. Consequently, we allow the present appeal. The order passed by the High Court is set aside. The written statement already filed is taken on record."*

11. Considering the true import of the procedural law, the matter is to be decided, after giving opportunity to controvert/contradict the stand, as taken by the plaintiff. Admittedly, the lis is at the initial stage, as issues have not yet been framed. Moreover, every litigant ought to be afforded an opportunity of deciding the controversy involved in the lis on merits, without the same being scuttled on the default committed by such party, unless the default is so pre-dominant that the same overshadows the merits of the case. The procedural law is meant for advancement of justice. Even if, the defaulting party is negligent, then also, the opportunity to defend the case cannot be snatched away from such party, as the other party can be compensated by imposing the costs.

12. Considering the above facts, the application is allowed, however, subject to cost of Rs. 10,000/-, out of which, 50% be deposited with HP High Court Bar Association Welfare Funds and 50% be given to the plaintiff, within a period of four weeks, from today. The defendant is permitted to file written statement before the learned trial Court, by demonstrating the deposit of the cost.

13. Parties through their respective counsel are directed to appear before the learned trial Court on 07.12.2026 at 10:00 am.

14. Pending application(s), if any, shall also stand disposed of.

(Virender Singh)
Judge

02nd November, 2026
(*Pramod Kumar*)