

CS 187/23

KRISHAN KUMAR GARG Vs. PARMOD KUMAR RATHORE AND  
ANR

19.05.2026

Present: Sh. Anil Anand, Ld. counsel for plaintiff with plaintiff.  
D-1 ex-parte.  
Ld. counsel for D-2 through VC.

**IA no. 1/26 (D-2's application u/O VIII Rule 1 r/w Sec. 148 r/w Sec. 151  
CPC along with Sec. 5 of Limitation Act, 1963)**

1. Copy supplied.
2. Arguments heard. Record perused.
3. D-2 wants condonation of delay in filing of its written statement and it is claimed that the present application with accompanying written statement and documents were filed before this court on 16.10.2025.
4. As per office report, the e-filing of the present application has been done only on 01.04.2026 and thus, the contention of D-2 that the application has been filed on 16.10.2025 is incorrect.
5. As per record, D-2 was served through ordinary means on 13.09.2023 and the present application has been preferred only 01.04.2026. The right of D-2 to file written statement was formally closed vide order dated 16.04.2025.
6. If one calculates the delay in filing of the present application along with the written statement, there is a delay of **900 days** in filing of written statement.
7. I may note that in the present application, D-2 is not seeking recall of

order dated 16.04.2025 whereby D-2's right to file written statement was formally closed.

8. It is submitted on behalf of counsel for D-2 that earlier D-2 was advised that since their application u/O VII Rule 11 CPC is pending, therefore, they were not obliged to file written statement. It is claimed that now they have changed the counsel and thus, the present application has been moved.
9. I may note that the above contention was taken on behalf of D-2 on 16.04.2025 and a specific order in this regard was passed. The relevant portion of the said order is quoted hereinafter:

*“36. As far as D-2 is concerned, despite expiry of statutory time to file written statement, D-2 has not filed any written statement and it was argued before this Court that only after this Court decides D-2's application U/O VII Rule 11 CPC would D-2 file written statement.*

*37. It is now settled law that pendency of an application U/O VII Rule 11 CPC shall not mean that the time to file written statement does not begin to run. As already noted, D-2 entered appearance in this case on 19.09.2023.*

*38. As per record, the summons in this case were served on D-2 through ordinary means on 13.09.2023 and thus it can be safely said that at least since said date, time for filing written statement began to run. D-2 should have filed its written statement as per law. Since, despite expiry of statutory time, no written statement has been filed on behalf of D-2, right of D-2 to file written statement is closed.*

*39. I may reiterate even at the cost of repetition that only because D-2 had preferred an application U/O VII Rule 11 CPC shall not mean that D-2 was not liable in law to file its written statement.”*

10. A bare perusal of the above shows that on 16.04.2025 itself, court had specifically held that mere pendency of an application u/O VII Rule 11 CPC would not mean that the time to file written statement does not begin to run. Despite the said observation, it is only after an year that the present application has been moved. Thus, there is not only unexplained delay on the part of D-2 in filing of written

statement, but also a clear and apparent neglect on the part of D-2 in prosecuting the case. If the present application is allowed, it would be against all established canons of law. Even though procedure is a hand maid in justice, it does not mean that repeated willful defaults of a litigant should be condoned at his mere asking.

11. In this case, no cause, much less sufficient cause is shown by D-2 which may then persuade the court in condoning the delay in filing of written statement. The application is nothing but an abuse of process of law. It is accordingly dismissed with a cost of Rs.10,000/- to be paid to the plaintiff.

**12. Thus, the written statement of D-2 or the documents filed therewith shall not form part of record. Ahlmad is directed to tag the application and the other accompanying documents/written statement as per rules.**

13. PW-1/Sh. Krishan Kumar Garg is examined and discharged. I may note that counsel for D-2 appeared through VC and did not appear in court for cross-examining the witness. He claim that the soft copy of affidavit supplied to him could not be downloaded and an intimation in this regard was also sent. This fact is disputed by counsel for plaintiff who points out that a similar plea was taken on the last date and on the directions of the court a copy of the affidavit in evidence was again supplied on 31.01.2026.

14. The record shows that plaintiff filed his affidavit in evidence on 21.05.2025 and on that date none appeared on behalf of D-2. On that day, a direction was given to plaintiff to supply copy to D-2. A similar direction was again given on 17.10.2025. D-2 still contested

that it has not received copy of affidavit in evidence on 30.01.2026. Thus, to put the controversy to an end, a direction was given to supply copy of evidence to D-2 again. Yet again, a similar plea is taken on behalf of D-2 without any application or documents to support the same. If D-2 was not supplied any copy of evidence, what prevented D-2 from moving an application in this regard. Perusal of this order-sheet would show that for 900 days, D-2 has not bothered to file its written statement and on one ground or the other it is delaying the proceedings in this matter. The plea of D-2 appears to be a mere ruse and not a case where there is an actual non-supply of affidavit in evidence. In such circumstances, after due opportunity to D-2, right of D-2 to cross-examine PW-1 is closed.

15.Plaintiff does not wish to lead any further evidence. Thus, PE is closed.

16.D-1 is already ex-parte. There is no written statement of D-2 on record and thus, there is no need to list the matter for defence evidence. Accordingly, list for final arguments on 03.06.2026.

AASHISH GUPTA  
DJ-01/NE/KKD/DELHI  
19.05.2026