

Parmjeet Singh Vs. Chandan Kumar and Anr.

C.S. No. 50 of 2023

14.05.2025

Present: Mr. T.S. Chauhan, Sr. Advocate, with Mr. Surya Chauhan, Advocate, for the plaintiff/non-applicant.

Mr. Neeraj Gupta, Sr. Advocate, with Mr. Pranjal Munjal, Advocate, for defendant No.1/applicant.

Mr. Sohan Singh Rathore, Advocate, for defendant No. 2.

OMP No. 862 of 2024

Heard.

2. By way of this application, a prayer has been made on behalf of defendant No. 1 for extension of time in filing the written statement.

3. It is averred in the application that defendant No. 1 was served with a notice in Civil Suit No. 50 of 2023, with direction to appear on 28.12.2023. Defendant No. 1 had duly authorized the counsel by signing power of attorney to appear on his behalf on the date fixed i.e. 28.12.2023. The power of attorney (Vakalatnama) was filed in the Registry of this Court on 27.12.2023, but the learned counsel engaged by defendant No. 1 could not appear in the Court on 28.12.2023, on account of inadvertent omission. In result, defendant No. 1 was ordered to be proceeded against *ex parte* on 28.12.2023. After attaining the knowledge as to passing of *ex parte* order, an application being

OMP No. 336 of 2024, was filed on behalf of defendant No. 1 under Order 9 Rule 7 of the Code of Civil Procedure on 08.01.2024. On 21.05.2024, a Co-ordinate Bench of this Court had disposed of OMP No. 336 of 2024, by observing as under:-

“In the present case, since nothing had transpired on 28.12.2023 and the matter was simply adjourned for filing the written statement by defendant No.2, therefore, defendant No. 1 had a right to join the proceedings on the adjourned date and file the written statement. Hence, the application is dismissed as having become infructuous”.

4. It is further the case of defendant No.1 that on 05.07.2024, learned Senior Counsel representing defendant No.1 unfortunately lost his father and incidentally the instructing counsel in the case was none other than the spouse of learned Senior Counsel. Both of them had to attend the last rights and all other attending rituals. On account of this unfortunate event, learned Senior Counsel and learned Instructing Counsel remained busy and could not obtain instructions for preparing the written statement. Lastly, on 20.08.2024, the written statement was prepared on the instructions of defendant No.1. In addition, counter claim was also prepared and the written statement, counter claim alongwith the instant application were filed in the Registry of this Court on 24.08.2024.

5. In the above manner, the delay in filing the written statement has been sought to be explained.

6. The plaintiff/non-applicant has opposed the prayer. He has filed reply to the application by raising an objection that the application is not maintainable as defendant No. 1 has failed to explain the delay in filing the application and written statement. It is contended that written statement has been filed after about eight months and there is no reasonable explanation for the delay.

7. Having considered the rival claims, it will be relevant to observe in the first instance that this Court having jurisdiction to try the original suit has framed the High Court of Himachal Pradesh (Original Side) Rules, 1997, in terms of Section 129 of the Code of Civil Procedure. Chapter VI of *ibid* Rules deals with appearance by defendant, written statement and set off and counter claim. Rules 2 and 3 of Chapter VI reads as under:-

“2. **PROCEDURE WHEN DEFENDANT APPEARS**

If the defendant appears personally or by an advocate before or on the day fixed for his appearance in the writ of summons:-

- (i) *where the summons had been issued for final disposal, the suit shall be set down for final disposal on the next day or any subsequent day;*
- (ii) *where the summons is for appearance and for filing written statement, the defendant shall file the written statement on the date fixed for appearance. A copy of the written statement shall be served on the plaintiff and the written statement shall not be accepted unless it contains an endorsement of service signed by such party or his Advocate.*

3. **EXTENSION OF TIME FOR FILING
WRITTEN STATEMENT**

Ordinarily not more than one extension of time shall be granted to the defendant for filing a written statement; provided that a second or any further extension may be granted only on application made in writing setting forth sufficient grounds for such extension and supported, if so required, by an affidavit.”

8. In light of the original side rules framed by this Court for regulating the procedure, Order 8 will not be strictly applicable.

9. In any case, what has transpired from the averments made in the application is that defendant No. 1 had not been at fault at any point of time. After being served, defendant No. 1 had engaged the counsel and it was for the reasons not attributable to defendant No. 1 that the written statement was not filed with promptitude. It is more than settled that a party cannot be made to suffer without any fault on his/her part.

10. The order dated 21.05.2024, passed by this Court, whereby the defendant was allowed to continue the proceedings while disposing of OMP No. 366 of 2024, has not been challenged by non-applicant/plaintiff. It has also not been disputed by plaintiff that learned Senior Counsel and learned Instructing Counsel engaged by defendant No. 1 had suffered loss in the family. That being so, I am of the considered view that the application deserves to be allowed. The procedural law,

otherwise, also should not be normally applied so as to scuttle the substantive rights of the parties.

11. Written statement has already been filed by defendant No. 1 on 24.08.2024.

12. In result, the application is allowed. The delay, if any, in filing the written statement is condoned. The time for filing the written statement is enlarged/extended. Application stands disposed of.

Civil Suit No. 50 of 2023

Written statement is taken on record.

Time sought on behalf of plaintiff to file replication.

Be filed on or before the next date of hearing.

Counter Claim No..... of 2025

Be registered.

Time sought to file written statement. Be filed on or before the next date of hearing.

List on **24.06.2025.**

**(Satyen Vaidya)
Judge**

14th May, 2025
(sushma)