



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 439 of 2026.

Reserved on : 11.09.2026.

Date of decision: 16.09.2026.

Parkashvati

.....Petitioner.

Versus

Union of India and others

.....Respondents.

Coram

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner : Mr.Jagan Nath, Advocate.

For the Respondents : Mr. Kanwalvir Singh Kang and Mr. Rajesh Prakash, Advocates, for respondent Nos. 1, 3 and 7.

**Mr. Diwakar Dev Sharma,
Additional Advocate General, for
respondent Nos.2, 4, 5 and 6.**

Romesh Verma, Judge

The present petition arises out of the order as passed by the learned Additional District Judge-II, dated 25.06.2026, whereby an application filed under Order VIII Rule 1 of the Code of



Civil Procedure (for short 'CPC') on behalf of the plaintiff-petitioner was ordered to be dismissed.

2. The facts, as emerge in the present case, are that the plaintiff-petitioner filed a suit for decree of damages and also for decree of permanent prohibitory injunction against the defendants-respondents in the Court of learned District Judge, Shimla, District Shimla, H.P. which was assigned to the learned Additional District Judge-II, Shimla, District Shimla.

3. The notices were issued to the defendants on 24.06.2025, returnable for 25.07.2025. The defendants were served and thereafter on 25.07.2025 they sought time to file written statement and the case was fixed for filing written statement on 06.09.2025. On 06.09.2025, the defendants again sought time to file written statement and the case was fixed on 09.10.2025. The defendants No.1 to 7 filed the written statement on 29.11.2025. On the very same day, an application came to be filed by the plaintiff-petitioner under the provisions of Order VIII Rule 1 of CPC with the prayer that the written statement as filed may not be taken on record and the right of the defendants-respondents to file the written statement may be ordered to be closed.

4. The said application was resisted by the defendants/respondents by filing an exhaustive reply wherein all the



averments as made by the plaintiff-petitioner therein were refuted and denied.

5. The learned Additional District Judge-II, Shimla, vide its impugned order dated 25.06.2026 dismissed the application as filed by the plaintiff-petitioner.

6. Feeling dis-satisfied, the plaintiff-petitioner has approached this Court by assailing the said impugned order.

7. It is contended by learned counsel for the plaintiff-petitioner that the impugned order as passed by the learned Court below is not sustainable in the eyes of law and after accepting the present petition, the right to file the written statement on behalf of the defendants may be ordered to be closed. It is further contended by learned counsel for the plaintiff-petitioner that the learned Court below has not adhered to the provisions of Order VIII Rule 1 of CPC and has wrongly dismissed the application filed by the plaintiff-petitioner by not closing the right of the defendants to file the written statement.

8. On the other hand, Mr. Kanwalvir Singh Kang and Mr. Rajesh Prakash, Advocates, for respondents No.1, 3 and 7 have defended the impugned order. It is contended by Mr. Kang that this Court while exercising the powers under Article 227 of the Constitution will not interfere with the impugned order. Even



otherwise, the learned Additional District Judge-II has passed a well-reasoned order and it does not call for any interference.

9. I have heard the learned counsel for both the parties.

10. The plaintiff-petitioner approached the Court of learned Additional District Judge-II, Shimla, by filing suit for damages against the respondents. The suit was listed before the learned District Judge-II on 24.06.2025 when the said civil suit was registered and it was ordered that the defendants be got served through ordinary summons as well as RAD, returnable for 25.07.2025. On 25.07.2025, defendants No.1 to 7 sought time for filing written statement and the same was allowed and it was ordered that let written statement be filed on 06.09.2025. On 06.09.2025, the learned counsel for the defendants again sought time to file written statement and the learned Additional District Judge-II allowed the prayer of the learned counsel for the defendants and it was ordered let the written statement be filed on 09.10.2025. The case was listed before the learned Court below on 09.10.2025. Again, the defendants sought time and it was ordered let written statement be filed on 29.11.2025, being last opportunity. On 29.11.2025, the written statement was filed by the defendants and the copy thereof was supplied to the learned counsel for the plaintiff. The present petitioner-plaintiff on the very same day filed an application under



the provisions of Order VIII Rule 1 of CPC with the prayer that the written statement may not be taken on record and the defendants' right to file the written statement be closed.

11. The provisions of Order VIII Rule 1 of CPC read as follows:

“WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM

1. Written statement-The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

12. It is contended by learned counsel for the plaintiff-petitioner that since as per the mandate of the CPC, the written statement is required to be filed within a period of 30 days and outer limit to file the written statement is 90 days. Therefore, after the expiry of 90 days, the written statement as filed by the defendants-respondents could not have been entertained. He further submits that since 90 days expired in the present case on 30.09.2025,



therefore, the impugned order as passed by the learned Court below is not sustainable in the eyes of law.

13. On the other hand, it is contended by Mr. Kanwalvir Singh Kang that though it is admitted fact that the defendants were served for 25.07.2025 and they appeared before the learned Court below on 25.07.2025 and on the request of learned counsel for the defendants-respondents, time was granted to file the written statement on 06.09.2025. Thereafter, on 06.09.2025 and 09.10.2025, time was sought by learned counsel for the defendants/respondents to file the written statement and the same was allowed in the presence of learned counsel for the plaintiff-respondent. It has further been contended by Mr. Kang, learned counsel for the defendants-respondents that at that time no objection was raised by learned counsel for the plaintiff-petitioner. Therefore, the objection, as is being raised now, is an afterthought and not sustainable in the eyes of law.

14. A perusal of the case file reveals that time was granted to the defendants to file written statement in the presence of learned counsel for the plaintiff and no objection of any kind was made at that time. The defendants were granted time on 25.07.2025,



06.09.2025 and finally on 09.10.2025 whereby last opportunity was granted to the defendants to file written statement. The learned Court below fixed the date for filing written statement on 29.11.2025 and the on very same day the written statement came to be filed by the defendants and the same was never objected to by the plaintiff-petitioner. Therefore, the plea which is now being raised by the plaintiff-petitioner is without any merit.

15. Once, the Court had granted the permission to the defendants to file written statement on different dates and the said order stood complied with by the defendants by filing written statement on 29.11.2025, therefore, the plea as raised by the plaintiff-petitioner deserves to be rejected. The Court had granted time and extended the period to file written statement, therefore, no fault can be found in the impugned order, as passed by the learned Court below, as rightly pointed out by Mr. Kang, learned counsel for the defendants-respondents.

16. The time was extended by the learned Court below in the presence of learned counsel for the plaintiff-petitioner and when last opportunity was granted on 09.10.2025, the needful was done by the defendants/respondents by filing written statement.



17. It is noticeable from the record that the application as filed by the plaintiff-petitioner for closure of right of defendants-respondents to file written statement came to be filed when the written statement had already been filed and taken on record by the learned Court below. Once, the learned Court below had extended and granted time to the defendants to file written statement and the same has been taken on record, the application which has been filed by the plaintiff-respondent for the closure of the right of the defendants to file written statement is without any substance. The learned Court below has rightly exercised the jurisdiction and it does not suffer from any infirmity.

18. The Hon'ble Apex Court has repeatedly held that written statement can be entertained by Court after 90 days of service of summons as the provisions of Order VIII Rule 1 of CPC (as amended in 1999) does not specifically take away the power of Court to entertain written statement beyond 90 days. Though, it is admitted that extension of time can be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time is not extended. Order VIII Rule 1 of CPC is procedural and not a part of substantive law.



19. Order VIII Rule 1 of CPC after the amendment casts an obligation on the defendant to file written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the Court and also does not specifically take away the power of the Court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII Rule 1 is procedural and it is not a part of the substantive law. Order VIII Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the Court for quick relief and also to the serious inconvenience of the Court faced with frequent prayers of adjournments. The object is to expedite the hearing and not to scuttle the same.

20. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless



compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice.

21. Processual law is not to be tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress. Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The Courts when called upon to interpret the nature of the provision may keeping in view the entire context in which the provision came to be enacted hold the same to be directory though worded in the negative form.

22. The Hon'ble Apex Court in ***Civil Appeal No. 5066 of 2005*** titled as ***Smt. Rani Kusum vs. Smt. Kanchan Devi and others***, decided on 16.08.2005, has held as follows:

“19. After elaborating the purpose for introduction of Order VIII Rule 1, this Court in Kailash's Case (supra) at paragraph 45 observed that no straightjacket formula can be laid down except that observance of time schedule contemplated by Order VIII Rule 1 shall be the rule and departure therefrom an exception, made for satisfactory reasons only. The



conclusions have been summed up in Para 46. The relevant portion reads as follows:

"(iv) the purpose of providing the time schedule for filing the written statement under Order VIII Rule 1 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 Order VIII 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 CPC is not completely taken away.

(v) Though Order VIII Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil cases which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."



23. The Hon'ble Apex Court has held that extension of time may be allowed by way of an exception for reasons to be assigned by the defendant and also be placed on record in writing. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended.

24. In view of dictum of law as laid down by the Hon'ble Apex Court, this Court does not see any infirmity, perversity or illegality in the impugned order as passed by the learned Court below. The time was extended by the learned Court below on the request made by learned counsel for the defendants and within the stipulated period when the case was fixed on 29.11.2025, being last opportunity, the defendants filed written statement well within the said period. Therefore, no fault or lapse can be attributed to the defendants and on the given date, the defendants had filed the written statement.

25. As observed earlier, the written statement has been taken on record and the present application came to be filed by the plaintiff-petitioner only after filing of the same. This Court is of the



considered opinion that the learned Court below has exercised jurisdiction in a legal and valid manner and it does not call for any interference.

26. The power under Article 227 is limited to see that the Courts below function within the limits of their authority or jurisdiction. The High Court cannot interfere with the findings of fact recorded by the subordinate Court or Tribunal while exercising its jurisdiction under Article 227. The Hon'ble Apex Court has held that, over the last 50 years, it has consistently been observed that the limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with findings of fact or by setting aside the judgments of the courts below on merits.

27. Hon'ble Apex Court in **Civil Appeal No. 2226 of 2010**, titled **State of Haryana & others** vs. **Manoj Kumar**, decided on 09.03.2010 has held as follow:-

"23. More than half a century ago, the Constitution Bench of this court in Nagendra Nath Bora and Another v. Commissioner of Hills Division and Appeals, Assam & Others AIR 1958 SC 398 settled that power under Article 227 is limited to seeing that the courts below function within the limit of its authority or jurisdiction.

24. This court placed reliance on Nagendra Nath's case in a subsequent judgment in Nibaran Chandra Bag v. Mahendra Nath Ghughu AIR 1963 SC 1895. The court observed that



jurisdiction conferred under Article 227 is not by any means appellate in its nature for correcting errors in the decisions of subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority.

25. This court had an occasion to examine this aspect of the matter in the case of *Mohd. Yunus v. Mohd. Mustaqim & Others* (1983) 4 SCC 566. The court observed as under:-

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. For this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

26. This court again clearly reiterated the legal position in *Laxmikant Revchand Bhojwani & Another v. Pratapsing Mohansingh Pardeshi* (1995) 6 SCC 576. The court again cautioned that the High Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct



all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

27. A three-Judge Bench of this court in *Rena Drego (Mrs.) v. Lalchand Soni & Others* (1998) 3 SCC 341 again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate court or the tribunal while exercising its jurisdiction under Article 227. Its function is limited to seeing that the subordinate court or the tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it.

28. In *Virendra Kashinath Ravat & Another v. Vinayak N. Joshi & Others* (1999) 1 SCC 47 this court held that the limited power under Article 227 cannot be invoked except for ensuring that the subordinate courts function within its limits.

29. This court over 50 years has been consistently observing that limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the courts below on merit.”

28. To the similar extent, the Hon'ble Apex Court in **Civil Appeal No. 3072 of 2022**, titled as **Ibrat Faizan vs. Omaxe Buildhome Private Limited**, decided on 13.05.2022 has held as follows: -

“14. In view of the above, in the present case, the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the



order passed by the National Commission which has been passed in an appeal under Section 58 (1) (a) (iii) of the 2019 Act. We are in complete agreement with the view taken by the High Court. However, at the same time, it goes without saying that while exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

14.1 The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97, which has been consistently followed by this Court (see the recent decision of this Court in the case of Garment Craft v. Prakash Chand Goel, 2022 SCC Online SC 29). Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigor of the powers to be exercised under Article 227 of the Constitution of India.”



29. In view of the aforesaid exposition of law and discussion made hereinabove, the impugned order as passed by the learned Court below does not suffer from any infirmity. Consequently, the present petition is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

30. Before, parting, it is made clear that any observation made here-in-above, shall not be taken as an expression of opinion on the merits of the case and the same shall be adjudicated upon uninfluenced by any observations made here-in-above which are only for the purpose of instant petition.

(Romesh Verma)
Judge

16th September, 2026.
(krt)