

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****CMPMO No. : 89 of 2026****Reserved on : 23.04.2026****Decided on : 30.04.2026**

---

Anil Kumar Gupta and others ...Petitioners

Versus

Madan Gopal alias Madan Lal ...Respondents  
(since deceased) through LR's

---

*Coram*

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

*Whether approved for reporting?*<sup>1</sup> Yes

---

For the petitioners : Ms. Shristi Negi, Advocate.

For the respondents : Mr. Ashok K. Tyagi, Advocate.

---

**Virender Singh, Judge.**

Petitioners have approached this Court, by way of the instant petition, under Article 227 of the Constitution of India, with a prayer to set aside the order, dated 18<sup>th</sup> November, 2025, passed by the Court of learned Civil Judge, Court No. 2, Paonta Sahib, District Sirmaur, H.P. (hereinafter referred to as 'the trial Court'), in Civil

---

<sup>1</sup> *Whether Reporters of local papers may be allowed to see the judgment? Yes.*



Suit No. 154 of 2014, titled as Anil Kumar Gupta and others versus Madan Gopal @ Madan Lal.

2. Vide order, dated 18<sup>th</sup> November, 2025, the learned trial Court has dismissed the application, filed under Order VII Rule 14 of the Code of Civil Procedure, moved by the petitioners.

3. For the sake of convenience, the parties to the *lis*, are hereinafter, referred to, in the same manner, in which, they were referred to, by the learned trial Court.

4. The factual position, as borne out, from the record, leading to the filing of the present petition, may be summed up, as under:

4.1. The plaintiffs have filed a suit for permanent prohibitory and mandatory injunction against the defendant, restraining him from creating any obstruction and raising any construction in the *gair mumkin gali*, comprised of khasra No. 2810, measuring 06-72 sq. mtrs., situated at Up Sampa Paonta Sahib and for a decree of mandatory injunction to demolish the already raised wall and construction in the above mentioned khasra numbers.



4.2. The said suit has been filed by the plaintiffs, on the ground, that the *gair mumkin gali*, in question, is the only ingress and egress for their house. The said *gali* is stated to be joint between the plaintiffs and defendants, however, according to them, in the third week of July, 2014, the defendant had started interfering in the same by opening window towards the *gali* and threatened to cover the *gali*, by raising further construction and in the first week of October, 2014, he has closed the *gali* by raising wall there. According to the plaintiffs, due to wall construction, now, the plaintiffs could not enter in khasra No. 2811.

4.3. The said suit has been contested by the defendant, by filing the written statement, taking preliminary objections that the suit is not maintainable; plaintiffs have concealed the material facts from the scrutiny of the Court; they have no cause of action to file the suit; and the plaintiffs are estopped, by their own act and conduct, to file the present suit.

4.4. The very existence of the *gair mumkin gali* as ingress and egress has been disputed by the defendant.



According to the defendant, the plaintiffs have no right in the subject matter of the *lis*. They have only purchased one third share out of khewat khatauni No. 223/458, kitte 14, measuring 214-60 sq. mtrs., and in the sale deed, there is no reference with regard to the passage. Even, there was no reference of the passage/*gali* in the site plan attached with the sale deed. The jointness of the passage has also been disputed.

4.5. In the said suit, the plaintiffs have filed an application, under Order VII Rule 14 CPC, at the stage, when the *lis* was pending for plaintiffs' evidence. According to them, when the case was being prepared for evidence, it has come to the notice of the counsel for the plaintiffs that the site plan, depicting the spot position, could not be placed on record. The said document is stated to be very material for deciding the matter in controversy and according to them, no prejudice will be caused to the defendant, as, he will get the opportunity to cross-examine the witnesses of the plaintiffs.

4.6. This application has been contested by the defendant by filing the reply, taking preliminary objections



that the application is not maintainable; the suit was filed way back on 24<sup>th</sup> November, 2014 and they have not filed any list of document, as provided under Order VII Rule 14 CPC and the application has been moved after a gap of about eleven years, i.e. on 20<sup>th</sup> August, 2025, and there is no whisper in the application that despite due diligence, the applicants-plaintiffs could not produce the alleged site plan.

4.7. Re-iterating the stand, as taken in the written statement, a prayer has been made by the defendant, to dismiss the application.

4.8. The said application has been dismissed, by the learned trial Court, vide order, dated 28<sup>th</sup> November, 2025, mainly on the ground that the delay in moving the application has not been explained by the plaintiffs. According to the learned trial Court, one of the plaintiffs was examined on 20<sup>th</sup> August, 2025 and that opportunity was also not utilized by them to produce the site plan, which has now been sought to be produced.

4.9. The another ground, upon which, the application has been dismissed is that during the



pendency of the *lis* before the learned trial Court, the plaintiffs have moved the application under Order XXVI Rule 9 CPC, for appointment of Local Commissioner, which was dismissed by the learned trial Court on 4<sup>th</sup> June, 2025. This fact has been highlighted by the learned trial Court to decline the relief to the plaintiffs, on the ground, that the opportunity, which was available to the plaintiffs, to file the application, has not been utilized by them.

4.10. The learned trial Court has also dismissed the application on the ground that if the application is allowed, it would amount to re-opening of the examination of the plaintiffs' witnesses.

5. Aggrieved from the said order, the present petition, under Article 227 of the Constitution of India, has been filed, before this Court, assailing the order, mainly on the ground that the order passed by the learned trial Court is not sustainable in the eyes of law, as a hyper-technical approach has been adopted by the learned trial Court, ignoring the true spirit of the procedural law.

6. The controversy involved, in the present case, according to the plaintiffs, has not been considered by the



learned trial Court, vis-a-vis, relevance of the document, sought to be proved under Order VII Rule 14 CPC.

7. On the basis of the above facts, Ms. Shristi Negi, learned counsel appearing for the petitioners-plaintiffs, has prayed that the petition may kindly be allowed, by setting aside the order, passed by the learned trial Court, impugned herein, by allowing the application, under consideration.

8. Per contra, Mr. Ashok K. Tyagi, learned counsel appearing for the respondent-defendant, has opposed the said prayer, on the ground that the application is totally silent about the fact, as to why, the application has not been moved at the earliest available opportunity. Highlighting the preliminary objections, the learned counsel for the defendant has argued that the application is totally silent about the fact that despite due diligence, the plaintiffs could not produce the alleged site plan. As such, a prayer has been made to dismiss the petition.

9. The plaintiffs have moved the application, under Order VII Rule 14 CPC, before the learned trial Court. The



provisions of Order VII Rule 14 CPC, are reproduced, as under:

**“ ORDER VII**

*PLAINT*

*xxx*

*xxx*

*xxx*

**14. Production of document on which plaintiff sues or relies.**—(1) *Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*

*(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*

*(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.*

*(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiffs witnesses, or handed over to a witness merely to refresh his memory.*

10. Admittedly, the application for production of the site plan has been moved, when, the suit was listed for plaintiffs' evidence, i.e. trial of the suit has already



commenced. The plaintiffs have approached the Court with a prayer to pass a decree for permanent prohibitory and mandatory injunction against the defendant, for restraining him from creating any obstruction and raising any construction in the suit land, as well as, in the alternative, has also sought a decree of mandatory injunction to demolish the already raised wall and construction.

11. The issues were framed, on the basis of the pleadings and thereafter, the plaintiffs were directed to adduce the evidence. When, the *lis* was pending for PWs, the application under consideration has been filed, which has been dismissed by the learned trial Court.

12. The Code of Civil Procedure is a procedural law and it is no longer *res integra* that while interpreting the procedural law, hyper-technical approach should be avoided.

13. The Hon'ble Supreme Court in **The State of Punjab and another versus Shamlal Murari and another**, reported in **AIR 1976 Supreme Court 1177**, has elaborately interpreted the principles underlying the



procedural law. Relevant portion of para 8 of the judgment, is reproduced, as under:

*“8. ....We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the hand-maid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho’ procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum.....”*

14. The Hon’ble Supreme Court, in **Sambhaji and others versus Gangabai and others**, reported in **(2008) 17 Supreme Court Cases 117**, has again re-iterated the principles, by highlighting the basic consideration, in enacting the Code of Civil Procedure. Relevant para 6 of the judgment is reproduced, as under:

*“6. “6. The Code of Civil Procedure enacted in 1908 consolidated and amended the laws relating to the procedure of the Courts of Civil Judicature. It has undergone several amendments by several Acts of the Central and State Legislatures. Under Section 122 CPC the High Courts have power to amend by rules, the procedure laid down in the orders. In exercise of these powers various amendments have been made in the orders by various High Courts. Amendments have also been made keeping in view the recommendations of the Law Commission. Anxiety of Parliament as evident*



*from the amendments is to secure an early and expeditious disposal of civil suits and proceedings without sacrificing the fairness of trial and the principles of natural justice inbuilt in any sustainable procedure. The Statement of Objects and Reasons for enacting the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976) (in short “the 1976 Amendment Act”) highlights the following basic considerations in enacting the amendments:*

*‘5. (i) that a litigant should get a fair trial in accordance with the accepted principles of natural justice;*

*(ii) that every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;*

*(iii) that the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases.”*

*7. By the Code of Civil Procedure (Amendment) Act, 1999 (46 of 1999) (in short ‘the 1999 Amendment Act’) the text of Order 8 Rule 1 was sought to be substituted in a manner that the power of the court to extend the time for filing the written statement was so circumscribed as would not permit the time being extended beyond 30 days from the date of service of summons on the defendant. Due to resistance from the members of the Bar against enforcing such and similar other provisions sought to be introduced by way of amendment, the Amendment Act could not be promptly notified for enforcement. The text of the provision in the present form has been introduced by the Amendment Act with effect from 1-7-2002. The purpose of such-like amendments is stated in the Statement of Objects and Reasons as “to reduce delay in the disposal of civil cases’.*



8. *The text of Order 8 Rule 1, as it stands now, reads as under:*

*“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.”*

9. *Order 8 Rule 1 after the amendment casts an obligation on the defendant to file the 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 8 Rule 1 is procedural. It is not a part of the substantive law. Substituted Order 8 Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases, causing inconvenience to the plaintiffs and the petitioners approaching the court for quick relief and also the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.*

10. *All the rules of procedure are the handmaids 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.*

*11. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.*

*12. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive.....*

*13. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.....*

*14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. A Procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.*

*15. It is also to be noted that though the power of the court under the proviso appended to Rule 1 of Order 8 is circumscribed by the words "shall not be later than ninety days" but the consequences flowing from non- extension of*



*time are not specifically provided for though they may be read by necessary implication. 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.*

*16. Challenge to the constitutional validity of the Amendment Act and the 1999 Amendment Act was rejected by this Court in Salem Advocate Bar Association v. Union of India [2003 (1) SCC 49]. However, to work out modalities in respect of certain provisions a committee was constituted. After receipt of the committee's report the matter was considered by a three-Judge Bench in Salem Advocate Bar Assn. v. Union of India [2005 (6) SCC 344]. As regards Order 8 Rule 1 the committee's report is as follows: (SCC pp. 362-63, paras 15-18)*

*"15. The question is whether the court has any power or jurisdiction to extend the period beyond 90 days. The maximum period of 90 days to file written statement has been provided but the consequences on failure to file written statement within the said period have not been provided for in Order 8 Rule 1. The point for consideration is whether the provision providing for maximum period of ninety days is mandatory and, therefore, the court is altogether powerless to extend the time even in an exceptionally hard case.*

*16. It has been common practice for the parties to take long adjournments for filing written statements. The legislature with a view to curb this practice and to avoid unnecessary delay and adjournments, has provided for the maximum period within which the written statement is required to be filed. The mandatory or directory nature of Order 8 Rule 1 shall have to be determined by having regard to*



*the object sought to be achieved by the amendment. It is, thus, necessary to find out the intention of the legislature. The consequences which may follow and whether the same were intended by the legislature have also to be kept in view.*

*17. In Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [AIR 1965 SC 895] a Constitution Bench of this Court held that the question whether a particular provision is mandatory or directory cannot be resolved by laying down any general rule and it would depend upon the facts of each case and for that purpose the object of the statute in making out the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.*

*18. In Sangram Singh v. Election Tribunal, Kotah [AIR 1955 SC 425] considering the provisions of the Code dealing with the trial of suits, it was opined that: (SCR pp. 8-9)*

*“16. Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of*



*interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.*

*17. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle.””*

*(emphasis in original)*

*[See: SK. Salim Haji Abdul Khyumsab v. Kumar (2006(1) SCC 46)] and R.N. Jadi & Bros. v. Subhashchandra [2007(6) SCC 420]”*

15. Being guided by the principles, so enunciated, by the Hon’ble Supreme Court, in the cases, as reproduced, hereinabove, this Court would now proceed further to determine the prejudice, if any, which would be caused to the defendant, in case, the application under consideration is allowed.



16. The onus is upon the plaintiffs to prove their case and in case, the document, sought to be produced, by way of the application, filed under Order VII Rule 14 CPC, has not been produced by them, at the initial stage, or, at the time of moving the application, under Order XXVI Rule 9 CPC, would it be suffice for the learned trial Court to shut the doors of the Court, for the plaintiffs, to prove their case, by producing the document, which, according to them, is material for the adjudication of the case.

17. While deciding the application, under Order VII Rule 14 CPC, the Court will not go into the relevance or admissibility of the document, as, the said question would be considered after the closure of the evidence of both the parties, i.e. at the time of deciding the matter.

18. Moreover, the defendant cannot mandate the plaintiffs how to prove their case. Although, in the order, impugned herein, the learned trial Court has mentioned that allowing the application would cause prejudice to the defendant, but, the order is totally silent as to how such prejudice is going to be caused to the defendant, in case, the document sought to be produced, is permitted to be



produced. Production of the document on record and proving the same in accordance with law, are two different things. Moreover, when the document will be produced and proved by the plaintiffs, the defendant will certainly get the opportunity to rebut the said evidence, even, by cross-examining the witness(es), who will prove the said document, or, by adducing the evidence to controvert the said document.

19. In the reply, much stress has been led by the defendant that the application is totally silent about the fact that '*despite due diligence of the applicant, they could not produce the alleged site plan*'. When, the Legislature, in its wisdom, has not mandated, under Order VII Rule 14 CPC, to plead and prove their diligence, then, merely, on the asking of the defendant, the plaintiffs cannot be compelled to plead and prove their due diligence.

20. The only condition, which has been imposed, by the Legislature, is that if the document is not produced at the initial stage, that may be taken on record with the permission of the Court. By way of the application, filed under Order VII Rule 14 CPC, the plaintiffs have sought



the permission of the Court to produce the document, by pleading that the said document could not be produced earlier and the same has come to the notice of the counsel for the plaintiffs at the time of preparing the case for evidence.

21. The hyper-technical approach adopted by the learned trial Court is also not sustainable in the eyes of law, as, the case, at the relevant time, was fixed for PWs. Even otherwise, at the worst, it can be said that the plaintiffs were negligent in prosecuting their case, even, then, the document can be permitted to be produced on record, by imposing cost, for their alleged negligence.

22. Considering all these facts, this Court is of the view that taking into consideration the true spirit of the procedural law, the application under consideration is liable to be allowed. Therefore, the order impugned herein is not sustainable in the eyes of law, since, the learned trial Court has not properly exercised the jurisdiction vested in it.

23. Consequently, the petition is allowed and the order impugned herein is set aside. The application, filed



by the plaintiffs, under Order VII Rule 14 CPC, is allowed and the document is ordered to be taken on record, subject to cost of ₹ 5,000/-.

24. Parties, through their counsel, are directed to appear before the learned trial Court, on 18<sup>th</sup> May, 2026, at 10.00 a.m.

25. The pending miscellaneous applications, if any, shall also stand disposed of accordingly.

**( Virender Singh )**  
**Judge**

**April 30, 2026**  
*( rajni )*