

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**CMP(M) No. 2133 of 2025 &
CR No. 21 of 2026**
Decided on : 19.03.2026

State of HP ...Petitioner

Versus

Ram Kishan ...Respondent

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner: Mr. Sumit Sharma, Deputy
Advocate General.

For the respondent: Mr. Bhim Raj Sharma, Advocate.

Jiya Lal Bhardwaj, Judge (Oral)

CMP(M) No. 2133 of 2025

Keeping in view the averments made in the application, the delay in filing the revision petition is condoned. The application stands disposed of.

CR No. 21 of 2026

2. By way of present petition, the petitioner has laid challenge to the order dated 25.03.2025, passed by the learned Senior Civil Judge, Nalagarh, in Civil Suit No. 45/2024, titled, ***Ram Kishan vs. State of HP***, whereby the right to file written statement on behalf of the

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*



petitioner/defendant has been struck off.

3. Heard.

4. Learned Deputy Advocate General has submitted that the respondent-plaintiff has filed a suit for declaration with consequential relief, wherein the ejectment order dated 15.09.2021 and order dated 28.02.2024, have been challenged qua the suit land measuring 00-06 Biswansi, bearing Khasra No. 178/1 and 178, comprised in Kh./Kht. No. 41min/44, 45min/48 situated in the area of village Paundi (Chhachhi), Tehsil Ramshehar. The respondent-plaintiff has encroached upon the Government land and the petitioner-defendant could not contest the suit for the reason that the old record is required to be scrutinized, because the suit land was initially vested in State of PEPSU by way of Punjab Village Common Land Act, 1961. The suit land thereafter was vested with the State of Himachal Pradesh by virtue of Himachal Pradesh Village Common Land (Vestings and Utilisation) Act, 1974. Further some of the record is in Urdu language and no translator is available in Tehsil Ramshehar and, therefore, the written statement could not be prepared in time. It has been argued by the learned



counsel for the petitioner-defendant that no prejudice will be caused to the respondent-plaintiff, in case the impugned order is set aside and one opportunity is granted to the petitioner-defendant to file written statement.

5. The Hon'ble Supreme Court has laid down the parameters in ***Aditya Hotel (P) Limited vs. Bombay Swadeshi Stores Limited, 2007 (14) SCC 431***. The relevant paras are reproduced hereinbelow:-

"6. The parameters for extending the time granted by Order VIII Rule 1 of the Code have been delineated by this Court in several cases. In *Kailash v. Nanhku and Ors.* (2005 (4) SCC 480) it was noted as follows:

"42. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the Court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and



such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

44. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, shall the defendant be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for the asking, and (ii) to compensate the plaintiff for the delay and inconvenience caused to him."

7. Since neither the trial Court nor the High Court have indicated any reason to justify the acceptance of the written statement after the expiry of the time fixed, we set aside the orders of the trial Court and that of the High Court. The matter is remitted to the trial Court to consider the matter afresh in the light of what has been stated in Kailash's case (supra). The appeal is allowed to the aforesaid extent with no order as to costs."

6. No doubt the learned Trial Court had struck off the defence of the petitioner-defendant while passing the impugned order dated 25.03.2025, but keeping in view the fact that the petitioner-defendant had to collect the documents and also to translate the documents which are in Urdu language, the interest of justice demands that one opportunity be granted to the petitioner-defendant to file written statement.



7. The State cannot be given free hand to file the written statement but at the same time since the plea raised by the respondent-plaintiff is regarding the land owned by the petitioner-defendant, the impugned order is required to be set aside in the interest of justice and one opportunity is to be granted to the petitioner-defendant to file the written statement.

8. The same very issue regarding striking off the defence had come before the Co-ordinate Bench of this Court in CR No. 6 of 2026, wherein this Court had held that though there is no infirmity found in the impugned order, however taking into account the fact that the property in the case at hand is stated to be government property, whereupon the present respondent-plaintiff is laying a claim, in the interest of justice, it would be appropriate that petitioner-defendant be afforded one opportunity to file the written statement, subject to deposit of the cost.

9. In view of the fact that the property, which is claimed by the respondent-plaintiff is a Government land, the present petition is allowed and the impugned order passed by the learned Trial Court dated 25.03.2025 is



modified to the extent that one last opportunity is granted to the petitioner-defendant to file the written statement, subject to payment of cost of ₹5,000/- to be paid to the respondent-plaintiff. Cost have been awarded to compensate the respondent-plaintiff for the delay, inconvenience caused to him and also to deter the petitioner-defendant for seeking extension of time for the asking. It is made clear that in case the petitioner-defendant does not file the written statement on the next date of hearing, the right to file the same shall be closed by the order of the learned trial Court. Parties are directed to appear before the learned trial Court on **20.04.2026**. Pending miscellaneous applications, if any, also stands disposed of.

19th March, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**