

IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

Civil Revision No. 59 of 2022

Reserved on : 20.3.2026

Decided on: 30.4.2026

Gopal Dass

... Petitioner

Versus

Rajput Sthania Sabha

...Respondent

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting? yes

For the Petitioner: Mr. Naveen Kumar and Mr.
Kiran Kumar, Advocates.

For the Respondent : Mr. C.N. Singh, Advocate.

Virender Singh, Judge

Petitioner Gopal Dass, by way of present petition, under Section 115 of the CPC, has assailed the orders dated 2.1.2020 and 24.2.2022, passed by the Court of learned Civil Judge (Court No. 4), Shimla, H.P. (hereinafter referred to as 'the trial Court'), in Civil Suit No. 1504 of 2019, titled as, 'Rajput Sthaniya Sabha versus Gopal Dass'.

2. By way of order dated 2.1.2020, the learned trial Court has struck off the defence of the defendant, as he could not file written statement, nor deposited the costs,

as per order dated 4.12.2019. Vide order dated 24.2.2022, the learned trial Court has dismissed the application, filed by the defendant, under Order 6 Rule 15(2), read with Section 151 CPC.

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

4. Brief facts, leading to filing the present Revision petition, before this Court, as borne out from the documents, annexed with the petition, are that plaintiff Rajput Sthaniya Sabha, Shimla has filed the suit for recovery of possession of two room set with kitchen, toilet & lobby at Skipton Villa, near Ritz Theater, Shimla, (hereinafter referred to as 'the suit premises'), and for recovery of use and occupation charges, against the defendant. The said suit has been filed on the ground that the area known as 'Skipton Villa', comprised in khata/khatauni No. 228/334, khasra Nos. 507 to 524, 526 and 531 to 533, kita 22, measuring 887-02 sq. meter, is a built up area.

5. According to the plaintiff, one Sharu Ram was Chowkidar with the plaintiff-society and the suit premises was given to him, for residential purpose. After the death of Sharu Ram, his son, Gopal Dass (plaintiff) continued to occupy the premises, despite requests made by the plaintiff-society to vacate the same. When, the premises were not vacated, despite oral requests, then, legal notice dated 24.1.2018 was issued to the defendant, but, the same has not been replied, nor complied with.

6. On the basis of above facts, relief, as claimed in the suit, has been sought.

7. Defendant, in the suit, put appearance and sought time to file written statement. Ultimately, he has moved application under Section 148 read with Section 151 of the CPC. Prior to that, he has taken three effective opportunities, as he has put appearance, before the learned trial Court on 25.2.2019. The said application was allowed by the learned trial Court, vide order dated 4.12.2019, by permitting the defendant to file written statement, on 2.1.2020, subject to costs of Rs. 1000/-.

Instead of filing the written statement, and to deposit the costs, defendant moved an application, under Order 6 Rule 15(2) CPC, however, vide order dated 2.1.2020, defence of the defendant was struck off, on the ground that he has neither filed written statement, nor deposited the costs of Rs. 1000/-, so imposed. The application under Order 6 Rule 15(2) CPC was dismissed, vide order dated 24.2.2022.

8. Aggrieved from the aforesaid orders, the present Revision petition has been filed.

9. The orders, passed by the learned trial Court, as referred to above, have been challenged by the defendant on the ground that on 4.12.2019, his application for extension of time to file written statement has been allowed, and the matter was adjourned for 2.1.2020. On that date, the defendant moved the application under Order 6 Rule 15(2), read with Section 151 of the CPC, with a prayer to direct the plaintiff to supply necessary particulars. On the said date, the learned trial Court directed the plaintiff to file reply to the said application, however, according to the defendant, his counsel

remained under the impression that reply has been called to the application under Order 6 Rule 15(2), read with Section 151 of the CPC, and after disposal of the application, he will be allowed to file the written statement.

10. Order dated 2.1.2020 has been assailed on the ground that the learned trial Court has erred in law by not appreciating the fact that application under Order 6 Rule 15 (2) CPC is pending, as such, there is no occasion for the learned trial Court to strike off the defence of the defendant.

11. Highlighting the fact that the application under Order 6 Rule 15(2) read with Section 151 CPC remained pending, till 24.2.2022, it has been prayed that on account of pendency of the said application, learned counsel for the defendant remained under the bonafide belief that the written statement will be filed after disposal of the said application. However, on 24.2.2022, it was revealed that defence of the defendant has already been struck off, vide order order 2.1.2020.

12. On the basis of above facts, Mr. Naveen Kumar and Mr. Kiran Kumar, Advocates, appearing for the petitioner/defendant have prayed that the present revision petition may be allowed.

13. The perusal of the record shows that during pendency of the Revision petition, before this Court, on 2.12.2025, learned counsel representing the plaintiff, placed on record the settlement deed, dated 19.11.2025, upon which, this Court has passed the following order, on 2.12.2025:

“Learned counsel for the respondent has filed a copy of settlement deed dated 19.11.2025 entered inter se the parties. Based on the aforesaid, it is submitted that the matter inter se the parties stands amicably settled. Photocopy of the same is taken on record and a copy of the same also stands supplied to the learned counsel for the petitioner. The original of the settlement deed has been seen and returned to the learned counsel for the respondent.

In view of the aforesaid, learned counsel for the respondent submits that an appropriate application for withdrawal of the suit shall now be filed before the learned trial Court.

In view thereof, list the matter after four weeks.”

14. On 5.3.2026, defendant, as well as, Secretary of the plaintiff Society were directed to be present, before this Court. In pursuance of directions, issued vide order dated 5.3.2026, both the parties have placed on record certain documents, by way of CMPs No. 4922 and 4923 of 2026. The documents were ordered to be taken on record.

15. By way of CMP No. 4922 of 2026, the defendant has placed on record the letter dated 1.3.2026 written by the defendant to his bank alongwith cheque deposit slip/form, the copy of cheque of Rs. 4,50,000/- and deposit receipt, dated 5.3.2026, whereas, the plaintiff-society by moving CMP No. 4923 of 2026, has placed on record the copy of settlement deed, which has taken place between the parties, alongwith receipts of the cheque and copy of the pass book.

16. In view of the stand, as taken by the defendant in CMP No. 4922 of 2026, it seems that the factum of compromise has been disputed. As per the stand taken in the application, bearing CMP No. 4922 of 2026, a sum of Rs. 4,50,000/- was deposited by the

defendant with the help of his family members, on 5.3.2026, when this Court has called the parties to appear in person, before this Court.

17. The cheque in question was deposited in the bank account of defendant Gopal Dass, on 19.11.2025 and the cheque was issued, on 18.11.2025, in the name of Gopal Dass, by the General Secretary of the plaintiff.

18. As per the settlement deed, which has taken place between the parties, on 19.11.2025, defendant Gopal Dass has undertaken to hand over the vacant possession of the premises to the plaintiff. In lieu of that, plaintiff-Society has paid a sum of Rs. 4,50,000/-, vide cheque bearing No. 3501052. The said cheque was submitted on 19.11.2025 and the amount was re-deposited by the defendant, in the account of plaintiff society, on 5.3.2026, that too, on the date, when, the parties were directed to place on record the relevant documents.

19. It seems that the defendant firstly enjoyed the usufruct of the amount of Rs. 4,50,000/-, deposited, in

his account on 19.11.2025 and when, the matter was brought to the notice of this Court by learned counsel for the plaintiff by placing on record the copy of compromise deed, then, the said amount has been re-deposited by the defendant, that too, without permission of the Court.

20. If the order dated 2.1.2020 is seen in the light of the order dated 4.12.2019, by virtue of which, the application of the defendant, under Section 148 of the CPC for extension of time, has been allowed, then, it can be said that the very motive of the defendant, right from the inception of the lis, is to delay the proceedings of the case, on one pretext or the other.

21. The learned trial Court, on 4.12.2019, in unequivocal terms, directed the defendant to file the written statement, that too, subject to last opportunity and payment of costs, as condition precedent. The relevant portion of the order dated 4.12.2019 is reproduced as under:

“Therefore, keeping in view the aforesaid factors involved in the present case and law cited above, this court deems it fit to allow the instant application. As such, the instant application is hereby allowed, subject to cost of ₹1000/-.

Application stands disposed of. Be tagged after due registration.

Be put up for filing of written statement on 02.01.2020. It is made clear that no further opportunity shall be provided for filing the written statement.”

22. Even otherwise, on 2.1.2020, instead of filing the written statement and depositing the costs, so imposed, he has adopted a novel idea to linger on the proceedings by moving application under Order 6 Rule 15(2), read with Section 151 of the CPC. The said application was dismissed vide order dated 24.2.2022.

23. On 2.1.2020, when, the plaintiff was directed to file reply to the application, the same was filed on 19.3.2020, and thereafter, time was taken by the defendant to file rejoinder. On 1.10.2021, the learned trial Court has passed the following order:

“Time prayed for filing rejoinder to application under Order 6 Rule 15(2) CPC. Allowed subject to last opportunity. Be listed for same on 16.11.2021.”

24. Even on 16.11.2021, rejoinder has not been filed and when despite last and exceptional last opportunity, rejoinder has not been filed, then, his right

to file rejoinder has been struck off, by the learned trial Court, vide order dated 1.12.2021.

25. The order dated 2.1.2020 has been passed by the learned trial Court on the ground that despite last opportunity granted to the defendant to file written statement, that too, subject to costs of Rs. 1000/-, he has neither filed written statement, nor deposited costs, so imposed.

26. The learned counsel for the defendant-petitioner could not satisfy the judicial conscience of this Court as to why application under Order 6 Rule 15 (2) CPC has not been filed, when, the case was listed for filing the written statement. The defendant was aware about the fact that the written statement has been ordered to be filed on that date, subject to last opportunity, that too, on depositing the costs, as pre-condition to do so.

27. On 15.3.2019, the learned trial Court has directed the defendant to file written statement and right from 15.3.2019, till moving the application under Section 148 read with Section 151 CPC, on 2.7.2019, the same was not filed. Thereafter, reply to the

application was filed on 5.9.2019, and the same was decided on 4.12.2019.

28. In this background, this Court is of the view that the learned trial Court has rightly passed the order dated 2.1.2020 by striking off the defence of the defendant. Admittedly, he has also not deposited the costs, as imposed vide order dated 4.12.2019, nor filed the written statement. The learned trial Court has imposed the costs, under Section 35 B of the Code of Civil Procedure, as a condition precedent, to file the written statement, that too, subject to last opportunity. Provisions of Section 35 B of the CPC, are reproduced, as under:

“35B. Costs for causing delay

1. If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit-(a) fails to take the step which he was required by or under this Code to take on that date, or (b) obtains an adjournment for taking such step or for producing evidence or on any other ground, the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of-(a)the suit by the plaintiff,

where the plaintiff was ordered to pay such costs,(b)the defence by the defendant, where the defendant was ordered to pay such costs.Explanation .-Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.

2. The costs, ordered to be paid under sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons.”

29. The learned trial Court, in the present case, has struck off the defence of the defendant on the ground of non-payment of costs, as well as, non-filing of the written statement, despite the last opportunity. The learned trial Court has rightly struck off the defence of the defendant, as there is nothing on the record to the effect that any request was made by the defendant to extend the time to deposit the costs. When, the costs have been imposed under Section 35 B of the CPC, then, the order passed by the learned trial Court, does not require any interference, in view of law laid down by Full Bench of Hon'ble Punjab & Haryana High Court, in case titled as, **'Anand Parkash versus Bharat Bhushan Rai & Anr.'**,

reported in AIR 1981 P&H 269. Relevant paragraphs 22 and 33 of the judgment are reproduced as under:

“22. It was contended by Mr. Goel, learned counsel for the respondent, that though word 'shall' has been used in the Section but by user of that word the power of the Court for granting more time for paying the costs is not taken away. I am afraid, I am, unable to agree with the contention of the learned counsel for the respondent. There might have been some merit in the contention of Mr. Goel if the word 'shall' had been used alone as in that event the judgment cited for the proposition that mere use of word 'shall' may not make a statute mandatory, would have been of some relevance. But in the instant case, a bare scrutiny of the provisions of Section 35B would show that the Legislature had made its intention absolutely clear and beyond the pale of any doubt that the provision are mandatory in nature and any non-compliance with the same would result in penal consequences as envisaged therein. When the provision of Section 35B are analysed we find that the Legislature was not satisfied by using the word 'shall' only and this word shall' in the Section is qualified by the words 'condition precedent'. Where a statute declares that doing of a particular thing shall be a condition precedent, then obviously the intention is to make it a peremptory mandate. A condition precedent is a condition which must be performed, if the Legislature had not intended to make the provisions of the Section mandatory, then it was not at all necessary for the Legislature to have qualified the word 'shall' by using words 'condition precedent'. The Legislature has made its intention absolutely clear by using the words 'shall

be a condition precedent' that the provision of this section are mandatory in nature and that any non-compliance of these provision would be fatal. To me the words 'condition precedent' qualifying the word ' shall' appear to be the clincher for interpreting the provisions of Section 35B are mandatory. As has been observed earlier the costs are ordered to be paid to compensate the other party who for no fault of his has to undergo inconvenience and incur expenses. If an adjournment is sought and the same is granted on payment of costs, then on the next date of hearing the party who sought adjournment, is bound to pay the costs. In my view, on the plain language of the section the Court is only required to see whether the costs have been paid or not and if a party does not pay the costs. Then the only course open to the Court is to disallow the prosecution of the suit or the defence any further. The Court would not go into the question whether the party who sought adjournment has or has not been guilty of delaying the suit or that it was not useful for the party to lead evidence or that the adjournment sought was unnecessary. When a party seeks adjournment, he pays the costs for his own folly or mistake which results into inconvenience and unnecessary harassment of the other side. He does not do so as an act of benevolence. Moreover, a litigant is expected to show full respect to the words of the Court, he cannot be permitted to ignore them or flout them with impunity. In case he opts to disregard the orders of the court and fails to pay the costs, then he must suffer penal consequences. The duty of paying costs is on the party who has been ordered to pay the costs. The Court or the party who has to receive costs, is not obliged to remind this

delinquent party to perform its duty. The whole purpose of enacting this provision would be frustrated if the same is held to be directory. It may again be emphasised that the Courts are not required to find out as to what was the intention of the party in obtaining adjournment as the moment as adjournment is obtained on the date on which a suit is fixed for hearing or for taking any step therein, then the same results in the delay of the decision of the suit. One of the essential requirements for attracting the applicability of this provision is that the date has to be when a suit is fixed for hearing or for taking any step therein. If the date is only for depositing of process fee or for doing some such act; then it cannot be said that the suit was fixed for hearing or for taking any step therein. When once the ingredients of the Section are proved, then no other extraneous consideration would be taken into account by the Courts.

(self emphasis supplied)

33. In accordance with the majority decision it is held that in the event of the party failing to pay the costs on the date next following the date of the order imposing costs, it is mandatory on the Court to disallow the consideration would weigh with the Court in fenere as the case may be and that the delinquent party. However, where the costs are not paid as a result of the circumstances beyond the control of the defaulting party. Then Section 148 of the Code in favour of the defaulting party if a strong case is made out for the exercise of such jurisdiction.”

(self emphasis supplied)

30. So far as the order dated 24.2.2022 is concerned, the defendant by way of this application, has sought direction to the plaintiff to disclose the date and year of the alleged employment of Sharu Ram, his father, as Chowkidar, date of his death and date and year of the alleged request, made by the plaintiff-Society to vacate the suit premises. The defendant is not a stranger, but son of Sharu Ram and in paras-4 and 5 of the plaint, date and year of the alleged request made by the plaintiff to vacate the premises, has clearly been mentioned.

31. Learned counsel for the defendant-petitioner could not satisfy the judicial conscience of this Court as to how date and year of the alleged employment of Sharu Ram is relevant for filing the written statement, whereas, the date of death of Sharu Ram is in the exclusive knowledge of the defendant, being his son. Thus, it has rightly been pointed out by learned counsel for the plaintiff that the present Revision Petition is nothing, but to delay the proceedings.

32. In view of the discussions made above, this

Court is of the view that the learned trial Court has rightly passed the order dated 2.1.2020, by virtue of which, the defence of the defendant has been struck off, on account of non-filing of the written statement, despite last opportunity, that too, subject to costs of Rs. 1000/-, which, he has never deposited.

33. Similarly, the learned trial Court has rightly dismissed the application under Order 6 Rule 15(2) CPC, vide order dated 24.2.2022, as the same seems to have been moved, just to prolong the proceedings.

34. So far as the compromise, which has allegedly taken place, during the pendency of the revision petition, before this Court, is concerned, the defendant has not accepted the same, as detailed above. As such, no orders can be passed on the compromise. However, the learned trial Court is at liberty to take into consideration the said fact. Consequently, the present Revision Petition is dismissed.

35. The parties to the lis are directed to appear before the learned trial Court, on 6.5.2026, at 10:00 a.m. Since, the lis is pending before the learned trial

Court, since the year 2018, as such, the learned trial Court is requested to dispose of the matter, within a period of six months from the date of appearance of parties, before it.

36. The pending application(s), if any, are also disposed of.

30.4.2026
Kalpana

(Virender Singh)
Judge