HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: **13.08.2026**
Pronounced on: **28.09.2026**
Uploaded on: **28.09.2026**

Whether the operative part or full Judgment is pronounced: **Full**

(Jammu Wing)

WP(C) No. 1307/2023
c/w CM(M) No. 29/2023, CM(M) No. 113/2023, CM(M) No. 219/2023, WP(C) No. 2515/2023, WP(C) No. 2863/2023, WP(C) No. 2901/2023, WP(C) No. 2988/2023, Ref(C) No. 1/2024, CM(M) No. 8/2024, CM(M) No. 230/2024, WP(C) No. 716/2024, WP(C) No. 779/2024, WP(C) No. 800/2024, WP(C) No. 927/2024, WP(C) No. 1029/2024, WP(C) No. 1060/2024, WP(C) No. 1123/2024, WP(C) No. 1335/2024, WP(C) No. 1522/2024, WP(C) No. 1584/2024, WP(C) No. 2399/2024, WP(C) No. 2813/2024, WP(C) No. 2834/2024, WP(C) No. 2872/2024, WP(C) No. 2940/2024, WP(C) No. 2952/2024, WP(C) No. 1/2025, CM(M) No. 137/2025, CM(M) No. 259/2025, CM(M) No. 317/2025, CM(M) No. 259/2025, WP(C) No. 317/2025, WP(C) No. 362/2025, WP(C) No. 416/2025, WP(C) No. 525/2025, WP(C) No. 613/2025, WP(C) No. 864/2025, WP(C) No. 1000/2025, WP(C) No. 1179/2025, WP(C) No. 1693/2025, WP(C) No. 1783/2025, WP(C) No. 2078/2025, WP(C) No. 2322/2025, WP(C) No. 2448/2025, WP(C) No. 3079/2025, WP(C) No. 3191/2025, WP(C) No. 14/2026, WP(C) No. 826/2026, WP(C) No. 1258/2026, WP(C) No. 1737/2026, WP(C) No. 1896/2026 and WP(C) No. 1979/2026 and CCP(S) No. 109/2026

(Srinagar Wing)

WP(C) No. 2887/2024
c/w CM(M) No. 332/2023, CM(M) No. 35/2024, CM(M) No. 302/2025, CM(M) No. 590/2025, WP(C) No. 1991/2024, WP(C) No. 903/2025, WP(C) No. 1101/2025, WP(C) No. 1142/2025, WP(C) No. 1663/2025, WP(C) No. 2784/2025, WP(C) No. 3334/2025, WP(C) No. 3346/2025, WP(C) No. 37/2026, WP(C) No. 142/2026, WP(C) No. 307/2026, WP(C) No. 1337/2026, WP(C) No. 1442/2026

Anoop Dutta (Jammu Wing) …..Appellant(s)/Petitioner(s)

Nissar Ahmad Bhat (Srinagar Wing)

Through: Mr. K. Nirmal Kotwal, Sr. Advocate with
Mr. Rajveer Singh Isher, Advocate

Mr. Rohit Kohli, Sr. Advocate with
Mr. Raghav Gaind, Advocate
Mr. Rahul Sharma, Advocate
Mr. Bhavesh Bhushan, Advocate
Ms. Rupali Sharma, Advocate
Mr. Virender Bhat, Advocate
Mr. Mazher Ali Khan, Advocate
Mr. Faiz-ul-Arif Fahim, Advocate
Mr. Amit Khajuria, Advocate &
Mr. Sourabh Gupta, Advocate
Mr. Shagun Singh, Advocate
Mr. Bhupinder Anthal, Advocate
Mr. Dheraj Singh Katoch, Advocate
Mr. Rohit Verma, Advocate
Ms. Ishna Vaid, Advocate
Mr. Rishav Vaid, Advocate
Mr. Sachin Dogra, Advocate &
Mr. Rahul Parihar, Advocate
Ms. Deepali Kapoor, Advocate
Mr. Dheeraj Choudhary, Advocate
Mr. Amit Pathania, Advocate
Mr. Gourav Phounsha, Advocate
Mr. Taha Khalil, Advocate
Mr. Arfat Rashid Lone, Advocate
Mr. Zahid, Advocate
Mr. Rizwan, Advocate
Mr. Bhat Fayaz, Advocate &
Ms. Nighat Amin, Advocate
Mr. Younis Ahad, Advocate
Mr. Zahir Abdullah, Advocate
Mr. Zamir Abdullah, Advocate
Mr. Farhan Amin, Advocate
Mr. Shafqat Nazir, Advocate with
Ms. Heena Baqal, Advocate
Mr. Shubam Kaith, Advocate
Mr. Masood Ahmad Mir, Advocate
Ms. Humaira Sajad, Advocate
Mr. S. M. Salim, Adv.
Mr. Adil Asimi, Adv.

vs

Union Territory of J&K and others ….. Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG with
Ms. Sagira Jaffer, Advocate
Mr. Vishal Sharma, DSGI with
Mr. Karan Sharma, CGSC
Mr. T. M. Shamsi, DSGI with

Ms. Shagufta Faizan, Advocate &
Ms. Yasmeen, Advocate
Mrs. Seema Shekhar, Sr. Advocate with
Ms. Snigdha Shekhar, Advocate
Mr. C. S. Gupta, Advocate
Mr. Pranav Kohli, Sr. Advocate with
Mr. Unique Sharma, Advocate &
Ms. Rounak Gupta, Advocate
Mr. Adarsh Sharma, Sr. Advocate with
Mr. Atul Verma, Advocate
Mr. Basit Manzoor Keng, Advocate
Mr. Asif Wani, Advocate
Mr. Vijay Gupta, Advocate
Mr. Mohammad Younis, State Assisting counsel

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

PER RAJNESH OSWAL 'J':

1. In this batch of writ petitions, the petitioners challenge the constitutional validity/legality of Notification bearing S.O. No. 1123(E) dated 18.03.2020. Given the identity of cause and relief sought, all these petitions are being decided together by this common order.

2. Pursuant to Section 96 of the Jammu and Kashmir Reorganization Act, 2019, the Central Government issued Notification S.O. 1123(E) dated 18.03.2020, applying the Acts listed in its Schedule, including the Code of Civil Procedure, 1908, with necessary adaptations and modifications, to the Union Territory of Jammu & Kashmir. It needs to be noted that vide S. O. 3774(E) dated 23.10.2020, similar order has been issued for the Union Territory of Ladakh.

3. By virtue of the aforesaid Notification, certain substitutions and omissions were effected in the Code of Civil Procedure, 1908

(hereinafter referred to as 'the Code of 1908'), in so far as its application to the Union Territory of Jammu & Kashmir is concerned.

4. In this batch of petitions, the petitioners have assailed the aforesaid S.O. only to the extent that it inserts the second proviso to Rule 1 of Order V and the first proviso to Rule 1 of Order VIII of the Code. Significantly, none of the writ petitioners have challenged the proviso introduced to Rule 10 of Order VIII of the Code.

5. Be that as it may, notwithstanding the absence of a direct challenge to the proviso added to Rule 10 of Order VIII of the Code, the determination of the challenge to the provisos inserted in Order V Rule 1 and Order VIII Rule 1 will necessarily have a direct bearing on the application and effect of the proviso appended to Order VIII Rule 10.

6. Order V and Order VIII Rule 1 and Rule 10 of Code of 1908, as applicable to UTs of Jammu & Kashmir and Ladakh are extracted as under:

> **Summons.**—1 (1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:
>
> Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim:
>
> Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

> (2) A defendant to whom a summons has been issued under sub-rule (1) may appear—
> (a) in person, or
> (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
> (c) by a pleader accompanied by some person able to answer all such questions.
> (3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.
> **Order VIII**
> 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 written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.
> **Rule 10. Procedure when party fails to present written statement called for by Court.**—Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:
> Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.

<u>Effect of Changes</u>:

7. Prior to the subject amendments, Order VIII Rule 1 of the Code of 1908 required the defendant to file a written statement within 30 days from the date of service of summons. Although an extension of time could be granted up to a total period of 90 days upon recorded reasons and payment of costs, the absence of express penal consequences meant that the 90 days period remained directory. The Court thus

retained judicial discretion to extend time beyond 90 days upon a showing of sufficient cause.

8. However, the amendments introduced vide S.O. 1123(E) to Order V and Order VIII have denuded the Court of this discretion. Under the amended scheme, if the defendant fails to file the written statement within the maximum outer limit of 120 days from the date of service of summons, the right to file the written statement stands forfeited, placing a complete statutory embargo on the Court from entertaining it thereafter, irrespective of the existence of sufficient cause. It is precisely this mandatory forfeiture that forms the core of the petitioners' challenge.

9. Significantly, by virtue of Order VIII Rule 6A, these statutory timelines governing written statements apply *mutatis mutandis* to written statements filed in response to a counterclaim.

<u>**Grounds of challenge**</u>**:**

(i) That amendments were made only with regard to the civil/commercial disputes and once the law is uniform across the country, no exception could have been made for the Union Territory of J&K and in fact, these amendments are required to be read in the commercial disputes and not in ordinary civil disputes. Precisely, the contention of the petitioners is that the amendments made in Order V and Order VIII of the Code of 1908 are applicable only to the commercial suits only and not the ordinary civil suits.

(ii) That the impugned provisos have been incorporated by the Executive in purported exercise of powers under Section 96 of the Jammu and

Kashmir Reorganization Act, 2019. However, the amendments so introduced are substantive in nature, whereas Section 96 of the Act of 2019 does not empower the Executive to alter underlying legislative policy or effect substantive statutory changes. Such alterations cannot be categorized as mere adaptations or modifications necessary for facilitating the application of the Code of Civil Procedure, 1908 to the Union Territory of Jammu and Kashmir.

(iii) That a contextual interpretation of Section 96 of the Jammu and Kashmir Reorganization Act, 2019 reveals that the Executive's power of adaptation and repeal extends exclusively to laws previously in force in the erstwhile State. Central enactments passed by Parliament apply *ipso facto* to the Union Territory of Jammu & Kashmir and the Union Territory of Ladakh, and such Parliamentary statutes can be modified or amended solely by Parliament itself, to the total exclusion of the Executive or any delegated authority.

(iv) That it is a settled principle of jurisprudence that procedural law is the handmaid of justice, not its mistress; thus, technicalities of procedure cannot be permitted to defeat the substantive rights of litigants. The impugned amendments introduce an unyielding statutory bar that unjustifiably fetters judicial discretion, depriving Courts of the power to condone delay and advance substantial justice in appropriate cases.

(v) That such a mandatory provision completely forecloses any judicial inquiry into extenuating circumstances or sufficient cause that may have genuinely prevented the defendant from filing the written statement within the prescribed timeframe.

(vi) That the action of the Central Government in issuing the impugned Notification suffers from manifest arbitrariness and a complete non-application of mind. By blindly transposing the rigorous procedural regime of the Commercial Courts Act, 2015 into the ordinary civil procedure of the Code of Civil Procedure, 1908 for the Union Territory of Jammu & Kashmir, the Executive has created an unjustified anomaly. The Central Government has offered no intelligible differentia or rational basis for subjecting the Union Territories to a restrictive procedural regime at variance with the law governing ordinary civil suits in the rest of the country. The impugned notification creates a territorial classification distinguishing the Union Territory of Jammu & Kashmir and the Union Territory of Ladakh from the rest of India. The respondents have failed to demonstrate that this classification is based on an intelligible differentia, or that it bears any reasonable nexus to the object sought to be achieved.

<u>Stand of the Official Respondents:</u>

10. The Union of India has filed response in WP(C) No.2887/2024 pending before Srinagar wing of this Court and it was submitted by the learned DSGI that the same be treated as response in all the petitions. It is submitted that the Ministry of Home Affairs, Government of India, exercising the powers conferred by Section 96 of the Jammu and Kashmir Reorganization Act, 2019, issued S.O. 1123(E) dated 18.03.2020 i.e. the Jammu and Kashmir Reorganization

(Adaptation of Central Laws) Order, 2020. By virtue of the said Order, key amendments were made to Order V Rule 1, as well as Order VIII Rules 1 and 10 of the Code of Civil Procedure, 1908 (CPC), as applicable to the Union Territories of Jammu & Kashmir. Pursuant to these amendments, the maximum time limit for filing a written statement in a non-commercial civil suit was fixed at 120 days. Upon the expiry of 120 days from the date of service of summons, the defendant forfeits the right to file a written statement, and the court is precluded from taking it on record. Furthermore, under Sections 95 and 96 of the 2019 Act, Parliament explicitly empowered the Central Government to make necessary adaptations, modifications, repeals, or amendments to laws enacted prior to the appointed date to facilitate their application to the Union Territory.

11. It is further submitted by the respondent-Union of India, that the aforesaid amendment had already been incorporated into the Code of Civil Procedure, 1977 by virtue of the Jammu and Kashmir Code of Civil Procedure (Amendment) Act, 2018, prior to the appointed date of October 31, 2019. Given that this provision was already part of the applicable law in the erstwhile State of Jammu and Kashmir prior to the enactment of the Jammu and Kashmir Reorganization Act, 2019, and was never challenged before any court, the subsequent amendment to Order V Rule 1 and Order VIII Rules 1 and 10 of the CPC, 1908, as effected through the Jammu and Kashmir Reorganization (Adaptation

of Central Laws) Order, 2020 (S.O. 1123(E) dated 18.03.2020), falls well within the statutory competence of the Central Government.

Arguments:

12. Mr. Rahul Sharma, learned counsel for the petitioner in WP(C) No.2901/2023, has submitted that that under Section 96 of the Jammu and Kashmir Reorganisation Act, 2019, the Central Government lacks the authority to introduce substantive amendments to the Code of Civil Procedure, 1908 (CPC) for its application in the Union Territories of Jammu & Kashmir and Ladakh. Section 96 merely empowers the Executive to make adaptational modifications to facilitate the application of existing laws to the successor Union Territories. Under the guise of "facilitating application," the Central Government could not have made substantive changes to the CPC, thereby divesting civil courts of their discretionary statutory power to condone delays in filing written statements. He has further urged that even where statutory provisions employ mandatory language such as the expression "shall" and prescribe consequences for non-compliance (as seen in provisions governing the deposit of rent), the Hon'ble Supreme Court of India has repeatedly held such procedural mandates to be directory rather than mandatory.By placing much reliance upon the judgment of the Telangana High Court in **M/s Health Care Reforms Doctors Association and others v. State of Telangana and others**, 2023(3) ALD 97 he has submitted that the ratio of the said judgment applies squarely to the case at hand, as the impugned S.O. introduces a substantive amendment in clear excess of statutory authority. He has

also relied upon the judgment of the Hon'ble Supreme Court of India in **Ganesh Prasad Sah Kesari and anr. v Laxmi Narayan Gupta, (1985) 3 SCC 53** to contend that the amendments made to the Code of Civil Procedure, 1908, as applicable to the Union Territories of Jammu & Kashmir and Ladakh, are merely directory rather than mandatory.

13. Mr. Sachin Dogra learned counsel appearing for the petitioner in WP(C) No.2863/2023, has argued that that the Central Government has failed to demonstrate any practical difficulty in applying the Code of Civil Procedure, 1908 (CPC) to the Union Territories of Jammu & Kashmir and Ladakh that would justify introducing a strict 120-day limit for filing a written statement or imposing the complete forfeiture of that right thereafter. He also submitted that Parliament intentionally maintained a clear dichotomy between ordinary civil suits and commercial suits; however, the Central Government has, without any rationale, arbitrarily obliterated this statutory distinction. Furthermore, while procedural law is settled to be a handmaid of justice, the amendments made to the aforementioned Orders of the CPC completely strip courts of judicial discretion, even under exceptional circumstances where a defendant is prevented from filing written statement within 120 days due to reasons beyond his/her control. Consequently, these rigid provisions operate to deny the fundamental right of access to justice. He has relied upon the judgment of the High Court of Karnataka in case titled "**Shri Basavaraj S. v/s State of Karnataka", WP(C) No. 32/2026 c/w WP No. 9372/2026, decided**

on 28.07.2026 wherein the similar amended provisions were read down.

14. Mr. Virender Bhat, learned counsel for the petitioner appearing in WP(C) Nos.2515/2023 and 1979/2026, highlighted various unforeseen situations that may prevent a defendant from filing a written statement within 120 days, contending that procedural laws cannot be permitted to destroy the substantive rights of litigants. Consequently, it was submitted that these provisions must be read down to preserve judicial discretion in deserving cases.

15. Mr. Rohit Verma, Mr. Mazher Ali Khan, learned counsel appearing for the petitioners in some of the accompanied petitions have also argued on the similar lines.

16. On the contrary, Mr. Vishal Sharma, learned DSGI representing Union of India has argued that by virtue of the Jammu and Kashmir Code of Civil Procedure (Amendment) Act, 2018 (Governor's Act No. XXXVII of 2018), the Code of Civil Procedure, 1977 applicable to the erstwhile State of Jammu & Kashmir was amended to incorporate the aforementioned provisos. He further argued that because the populace of the Union Territories of Jammu & Kashmir and Ladakh was already accustomed to the procedural provisions in force prior to the enactment of the Jammu and Kashmir Reorganization Act, 2019, the impugned Statutory Order (S.O.) was issued precisely to align the Central Code of Civil Procedure, 1908, with the law previously applicable in the region. He emphasized that the provisions of both

Codes are *pari materia*, save for minor nuances, and that the primary objective behind issuing the impugned S.O. was to curtail undue delays in civil litigation.

17. Ms. Monika Kohli, learned Sr.AAG appearing for the U. T of J&K, has submitted that Section 96 of the Jammu and Kashmir Reorganization Act, 2019, is framed in terms that explicitly empower the Central Government to make adaptations and modifications, by way of repeal or amendment, to facilitate the application of laws enacted prior to the appointed date to the successor Union Territories of Jammu & Kashmir and Ladakh. She submitted that the Fifth Schedule to the Reorganization Act enumerates various statutes, including Central Acts made applicable to both Union Territories, alongside State enactments that were either repealed or continued with necessary modifications. Furthermore, under Section 96 of the Act, the Central Government is vested with statutory authority to adapt, modify, or extend legal provisions, including those from repealed enactments, to ensure seamless legal continuity across the Union Territory of Jammu & Kashmir and the Union Territory of Ladakh.

18. Mr. Pranav Kohli, learned senior counsel appearing for the private respondent in one of the writ petitions, has submitted that the amended provisions are legally valid and serve the salutary purpose of expediting the disposal of civil suits and curtailing unnecessary delays.

19. Heard learned counsel for the parties and perused the record including the record produced by Ms. Monika Kohli, Sr. AAG.

Appreciation:

20. Following issues arise for consideration in this Court:

(i) Whether the Central Government had no power in terms of Section 96 of the J&K Reorganization Act to amend Order V and Order VIII of the Code of 1908 by incorporating the provisions as mentioned above?

(ii) Whether the provisos were added for the purpose of adjudicating the commercial suits only and not the ordinary suits?

(iii) Whether the amended provisions of Order V and Order VIII of the Code of 1908, are mandatory or directory?

(iv) Whether the procedural law, a tool handmaid of justice can operate in such a manner, so as to destroy the substantive rights of the party in a litigation not arising out of commercial disputes?

(v) Whether there was any justification for incorporating the impugned provisions in the Code of 1908 as applicable to the U. T. of J&K?

(vi) Whether the amended provisions require to be read down as done by the High Court of Karnataka, regarding the similar provisions incorporated in the CPC of 1908 through State amendment?

21. Before proceeding to answer the questions formulated hereinabove, we deem it appropriate to trace the genesis of the proposal pursuant to which amendments were introduced into the Code of Civil Procedure, Samvat 1977, as applicable to the erstwhile State of Jammu & Kashmir, by virtue of the Jammu and Kashmir Code of Civil Procedure (Amendment) Act, 2018 (Governor’s Act No. XXXVII of 2018).

22. Upon a meticulous examination of the official records produced by Ms. Monika Kohli, learned Senior Additional Advocate General, we observe that a draft Bill seeking to amend the Code was initially drawn up in or around the month of September 2018. The record is conspicuously devoid of any antecedent material or preliminary deliberative process indicating how or why the proposal for amending the Code of Civil Procedure was originally mooted, save for the fact that the draft Bill was routed through the administrative hierarchy of the Law Department in September 2018.

23. Indeed, the record reveals that it was only in October 2018 that a departmental note was recorded by the Deputy Legal Remembrancer, stating for the first time that in order to curtail procedural delays in the trial of civil suits, certain provisions of the Code of Civil Procedure, Samvat 1977 required amendment. The said note recorded that delay in the adjudication of civil cases leads to a travesty of justice, thereby necessitating emergent legislative measures. It was further noted that the draft Bill, styled as "The Code of Civil Procedure (Amendment) Bill, 2018", was prepared to incorporate provisions aimed at ensuring time-bound disposal of cases.

24. Apart from the aforesaid file noting, the record contains no substantive discussion or policy deliberation regarding the specific amendments proposed to be enacted. Nevertheless, it can be safely gathered from the said record that although the justification was articulated post facto, subsequent to the drafting of the Bill, the proposed amendments

were intended to serve the salutary purpose of curtailing delays in civil litigation.

25. Incidentally, in the month of September 2018, the Jammu and Kashmir Commercial Courts Act, 2018 (Governor's Act No. XIII of 2018, dated 26.09.2018) was published in the Government Gazette on September 26, 2018, providing for the establishment of Commercial Courts across the erstwhile State. By virtue of Section 13 of the said Act, specific amendments were introduced into the Code of Civil Procedure, 1977, strictly in its application to commercial disputes. These included statutory modifications to Order V and Order VIII of the Code, amendments identical in substance to those subsequently extended to all civil suits in the Union Territory of Jammu & Kashmir by way of the impugned Statutory Order.

26. It appears that the enactment of the Jammu and Kashmir Commercial Courts Act, 2018, served as the catalyst for the erstwhile State to introduce corresponding amendments to Order V and Order VIII of the Code of Civil Procedure, 1977. This was effected by virtue of Governor's Act No. XLI of 2018 dated December 13, 2018, which incorporated procedural amendments into the Code identical to those subsequently introduced by way of the impugned Statutory Order (S.O.) for the Union Territory of Jammu & Kashmir.

27. It needs to be noted that when extensive amendments were introduced into the Code of Civil Procedure, 1908, by virtue of the amending Acts of 1999 and 2002, their statutory validity became the subject of intense

scrutiny before the Apex Court in the celebrated precedent of **Salem Advocate Bar Association, Tamil Nadu v. Union of India, (2003) 6 SCC 49**. In the course of those proceedings, the Hon'ble Supreme Court constituted a high-powered Committee, comprising Mr. Justice M. Jagannadha Rao (then Chairman of the Law Commission of India), along with other Senior Advocates and requested it to submit a report on the operational feasibility and impact of the amendments enacted under the 1999 and 2002 Amendment Acts. Pursuant thereto, the Committee submitted three comprehensive reports.

28. Report No. 1 dealt with the clarification on amendments of Civil Procedure 1908 made by the amending acts of 1909 and 2002. The Committee considered the issue as to whether the maximum time limit for filing the written statement in Order VIII Rule 1 (90 days from the date of receiving summons) is unreasonable or whether such time can be extended? The Committee was of the view that the prescription of a tight upper limit of 90 days for filling written statement in certain cases, may result into serious miscarriage of justice, particularly, where Government or public sector undertakings, have to secure a lot of information on facts and it is likely that the Government and public sector undertakings will suffer a number of *ex parte* decrees in the new regime. Further the anomaly is that the provision for getting an *ex parte* decree set aside, if such a decree had been passed because the written statement was not filed in time, would become redundant

inasmuch as, even if, there was sufficient cause, the court is precluded from permitting the filing of the written statement after 90 days.

29. The Committee sounded a note of caution that a rigid adherence to the 90-day time limit for filing a written statement, computed from the date of service of summons, could result in a grave miscarriage of justice in deserving cases. The Committee's report pointedly observed that this rigid amendment would gravely prejudice the Government, which remains the single largest litigant in civil proceedings.

30. The Hon'ble Supreme Court of India in **Salem Advocate Bar Association, T. N. v. Union of India, (2005) 6 SCC 344,** has held that the provisions of Order VIII Rule 1 are directory and not mandatory. Crucially, this observation was rendered when the Amendment Act did not provide for any adverse statutory consequences upon default by the defendant in filing the written statement.

31. We have adverted to the Committee's report primarily to highlight that the Code of Civil Procedure (Amendment) Bill, 2018, was drafted and enacted without adequate deliberation. In formulating the 2018 enactment, the Authorities concerned ought to have due regard for the report and recommendations of the Committee constituted by the Hon'ble Supreme Court.

32. Be that as it may, the mere absence of preliminary deliberation or the failure to consider the Committee's report cannot, in itself, constitute a

valid ground to strike down the impugned Statutory Order as *ultra vires*.

33. Having noticed the background facts, we now proceed to consider the issues formulated hereinabove to adjudicate upon the constitutional and statutory validity of the impugned S.O.

Issue No. 1:

Whether the Central Government had no power in terms of section 96 of the J&K Reorganization Act to amend Order V and Order VIII of the Code of 1908 by incorporating the provisions as mentioned above?

34. In order to consider the abovementioned issue, it would be apt to take note of section 96 of the Reorganization Act, which is extracted as under:

> "**96. Power to adapt laws.--**For the purpose of facilitating the application in relation to the successor Union Territories, of any law made before the appointed day, as detailed in Fifth Schedule, the Central Government may, before the expiration of one year from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority."

35. Learned counsel for the petitioners had relied heavily upon the judgment of High Court of Telangana in **M/s Healthcare Reforms Doctors Association v. State of Telangana(supra),** to contended that the phraseology of Section 96 of the Jammu and Kashmir Reorganization Act, 2019, is identical to that of Section 101 of the Andhra Pradesh Reorganization Act, 2014; consequently, under the guise of facilitating the application of Central laws, specifically the

Code of Civil Procedure, 1908, in the present case, the Central Government could not have introduced substantive amendments. In the precedent cited *supra*, paragraph 4(3)(i) of Notification G.O. Ms. No. 68 dated 03.08.2015 sought to amend Section 3(2)(b) of the Andhra Pradesh Medical Registration Act, 1968, by substituting the words "thirteen members" with "five members." This amendment effectively reduced the elected members to a minority relative to those nominated by the Government. It was in this backdrop that the High Court for the State of Telangana observed that such a substantive alterative to the statutory scheme could not have been effected by way of an adaptation order.

36. To determine the applicability of the judgment of the High Court of the State of Telangana to the case at hand, it is necessary to examine Section 101 of the Andhra Pradesh Reorganization Act, 2014, which, according to the learned counsel for the petitioners, is *pari materia* with Section 96 of the Jammu and Kashmir Reorganization Act, 2019.Section101 of Reorganization act, 2014 is extracted as under:

> "101. For the purpose of facilitating the application of the legislation to the State of Andhra Pradesh or the State of Telangana, or any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptation and modifications of the laws, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority."

37. A side-by-side comparison of Section 96 of the Jammu and Kashmir Reorganization Act, 2019, and Section 101 of the Andhra Pradesh Reorganization Act, 2014, reveals a subtle distinction in the

phraseology employed by the legislature in the two provisions. Under Section 101 of the 2014 Act, the power is framed as being *"For the purpose of facilitating the application in relation to the State of Andhra Pradesh or the State of Telangana of any law made before the appointed day..."*, whereas Section 96 of the 2019 Act contains a far more circumscribed mandate, employing the expression *"For the purpose of facilitating the application in relation to the Union territory of Jammu and Kashmir or Union territory of Ladakh of any law made before the appointed day, **as detailed in Fifth Schedule** to this Act".*

38. In terms of Section 101 of the Andhra Pradesh Reorganisation Act, 2014, the power of adaptation extended generally to all laws enacted or in force prior to the appointed day. By contrast, under Section 96 of the Jammu and Kashmir Reorganisation Act, 2019, the scope of adaptation is explicitly related to those pre-existing laws specified and detailed within the Fifth Schedule to the Act.

39. The Fifth Schedule is structured into four distinct Tables:

Table 1 enumerates the Central Acts including the Code of Civil Procedure, 1908, made applicable to the Union Territory of Jammu & Kashmir;

Table 2 specifies the State Acts made applicable to both Union Territories;

Table 3 details the State Acts, including Governor's Acts, repealed in both Union Territories; and

Table 4 lists the State Acts, including Governor's Acts, that remain in force across both Union Territories.

40. Pursuant to Table 1, the Central Code of Civil Procedure, 1908, was extended to both Union Territories. The statutory phraseology employed in Section 96—*"for the purpose of facilitating the application in relation to the successor Union Territories, of any law made before the appointed day"* is wide and comprehensive enough to clothe the Central Government with necessary executive power to adapt and apply all enactments specified in the Fifth Schedule. Significantly, both the Central Code of Civil Procedure, 1908, and the erstwhile State Code of Civil Procedure, Samvat 1997 (1939 A.D.), were in force prior to the appointed day, i.e. October 31, 2019 in their respective territorial jurisdictions.

41. By virtue of Statutory Order (S.O.) 1123(E) dated March 18, 2020, the impugned provisions were not introduced into the Code of Civil Procedure for the first time; rather, identical provisions already existed in the Code of Civil Procedure, Samvat 1977, as applicable to the erstwhile State of Jammu & Kashmir. These provisions had been previously incorporated into the Code by way of the Jammu and Kashmir Code of Civil Procedure (Amendment) Act, 2018 (Governor's Act No. XXXVII of 2018).

42. The Union of India contends that these specific modifications were incorporated into the Central Code of Civil Procedure, 1908, in its application to the Union Territory of Jammu & Kashmir and the Union

Territory of Ladakh, solely to align and harmonize the Central legislation with the procedural laws hitherto in force in the erstwhile State. The argument proceeds on the premise that once the Central Government was empowered to facilitate the application of laws in force prior to the appointed day, such power inherently encompassed the authority to modify or amend the Central Act to bring it into parity with the pre-existing state law.

43. Unlike the matter before the High Court for the State of Telangana, where a substantive statutory modification was introduced *de novo* solely by way of an executive order and was consequently declared bad in law, the present case stands on an entirely different footing. Here, the populace of the erstwhile State was already familiar with the procedural regime enacted under the 2018 Governor's Act. The impugned provisions were incorporated into the Central Code of Civil Procedure, 1908, primarily to maintain legislative continuity and bring the Central Code into alignment with the laws hitherto operating in the region. Thus, no fault can be found with the exercise of executive power by the Central Government in promulgating Statutory Order 1123(E) of 2020.

44. Had the Parliament intended to limit executive adaptation powers under Section 96 of the Jammu and Kashmir Reorganization Act, 2019, strictly to facilitating the application of Central or State laws without modification, it would not have employed the comprehensive phraseology *"any law made before the appointed day, as detailed in*

Fifth Schedule to this Act." Had a narrower scope been contemplated, Parliament would have restricted the statutory reference to specific Tables within the Fifth Schedule rather than adverting to the Schedule in its entirety. In this context, it would be apposite to take note of the judgment of Hon'ble the Supreme Court of India in **Ramesh Birch v. Union of India, 1989 Supp (1) SCC 430,** and the relevant paras are extracted as under:

> **"19.** A perusal of the above judgments shows that the validity of the provisions in question were upheld on different lines of reasoning. Nevertheless all the learned Judges seem to have agreed — and, indeed, as pointed out in later decisions, it is inevitable in modern conditions — that, while Parliament should have ample and extensive powers of legislation, these should include a power to entrust some of those functions and powers to another body or authority. They also seem to have agreed that there should be a limitation placed on the extent of such entrustment. It is only on the question as to what this limitation should be that there was lack of consensus among the judges. All of them agreed that it could not be so extensive as to amount to "abdication" or "effacement". Some thought that there is no abdication or effacement unless it is total i.e. unless Parliament surrenders its powers in favour of a "parallel" legislature or loses control over the local authority to such an extent as to be unable to revoke the powers given to, or to exercise effective supervision over, the body entrusted therewith. But others were of opinion that such "abdication" or "effacement" could not even be partial and it would be bad if full powers to do everything that the legislature can do are conferred on a subordinate authority, although the legislature may retain the power to control the action of such authority by recalling such power or repealing the Acts passed by the subordinate authority. A different way in which the second of the above views has been enunciated — and it is this view which has dominated since — is by saying that the legislatures cannot wash their hands of their essential legislative function. Essential legislative function consists in laying down the legislative policy with sufficient clearness and in enunciating the standards which are to be enacted into a rule of law. This cannot be delegated. **What can be delegated is only the task of subordinate legislation which is by its very nature ancillary to the statute which delegates the power to make it and which must be within the policy and framework of the guidance provided by the legislature.**
>
> **25.** So far as the first aspect referred by Sri Swarup is concerned, **the provision only confers a power on the executive to determine, having regard to the local conditions prevalent in the Union territory, which one of several laws, all approved by one or the other of the legislatures in the country, will be the most suited to Chandigarh. Thus viewed, it would fall under one of the permissible categories of delegation referred to at p. 814 in the *Delhi Laws Act case*** [AIR 1951 SC 332] **and extracted by us earlier and, if so, it is not really an unguided or arbitrary power. There could have been no objection to**

the legislation if it had provided that the laws of one of the contiguous States (say Punjab) should be extended to Chandigarh. But such a provision would have been totally inadequate to meet the situation for two reasons. There may be more than one law in force on a subject in the contiguous States — say one in Punjab, one in Pepsu and one in Himachal Pradesh etc. — and Parliament was anxious that Chandigarh should have the benefit of that one of them which would most adequately meet the needs of the situation in that territory. Or, again, there may be no existing law on a particular subject in any of the contiguous areas which is why the power had to include the power of extending the laws of any State in India. While, in a very strict sense, this may involve a choice, it is in fact and in the general run of cases, only a decision on suitability for adaptation rather than choice of a policy. It is a delegation, not of policy, but of matters of detail for a meticulous appraisal of which Parliament has no time. Even if we assume that this involves a choice of policy, the restriction of such policy to one that is approved by Parliament or a State legislature constitutes a sufficient declaration of guideline within the meaning of the "policy guideline" theory."

45. Thus, this Court holds that Central Government had power in terms of Section 96 of Act of 2019 to amend Order V and Order VIII of the CPC of 1908.

<u>Issue No. 2:</u>

Whether the provisos were added for the purpose of adjudicating the commercial suits only and not the ordinary suits?

46. This issue is, in fact, has been covered above, where it has been observed that the amendments were made in CPC of 1977 through the J&K Civil Procedure Code (Amendment) Act, 2018, whereas through the medium of Section 13 of J&K Commercial Courts Act, 2018, amendment were made in CPC for commercial suits.

<u>Issue No. 3:</u>

Whether the amended provisions of Order V and Order VIII of the Code of 1908, are mandatory or directory?

47. In **Salem Advocates Bar Association, T.N. v. Union of India, (2005) 6 SCC 344**, the Hon'ble Apex Court has held as under:

"20. The use of the word "shall" in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.

21. In construing this provision, support can also be had from Order 8 Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the court, the court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to the suit as it thinks fit. In the context of the provision, despite use of the word "shall", the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if the written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. **The effect would be that under Rule 10 Order 8, the court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1."**

It needs to be noted that in absence of provisions as amended, the Courts have power to extend the time for filing written statement in "**exceptionally hard cases"** only, otherwise it would nullify the time period fixed by **Order VIII Rule 1**.

48. Further, in **M/S R. N. Jadi and Brothers and Ors vs Subhashchandra, (2007) 6 SCC 420**, it has been held that extension of time in departure of prescribed limit is not automatic, however, the same can be granted for the reasons to be recorded in writing and on being satisfied with the reasons put forth to substantiate the failure to file written statement within the specified period are justifiable.

49. Thus, notwithstanding the directory nature of the timeline under Order VIII, Rule 1 of the Code of Civil Procedure, 1908, the right of the defendant to file a written statement beyond the statutory limit remains subject to the showing of sufficient and justifiable cause, failing which such right stands forfeited.

50. Unlike the unamended provisions of Order VIII of the Code of Civil Procedure, 1908, applicable to non-commercial suits in the rest of India, which do not explicitly provide for an automatic forfeiture of the right to file a written statement, the amended provisions of Order V and Order VIII, as adapted for the Union Territory of Jammu & Kashmir and the Union Territory of Ladakh, expressly stipulate that the defendant forfeits the right to file a written statement upon the expiry of the maximum prescribed period.

51. It would be apt to take note of judgment of the Constitution Bench of Supreme Court in **New India Assurance Co. Ltd vs. Hilli Multipurpose Cold Storage Pvt Ltd. (2020) 5 SCC 757**, wherein the Hon'ble Supreme Court has held that the timeline provided for filing

the reply by the opposite party is mandatory. The relevant paras are extracted as under:

> **"42. In *Topline Shoes* [*Topline Shoes Ltd.* v. *Corporation Bank*, (2002) 6 SCC 33] , this Court was also of the view that in the Consumer Protection Act, "no consequence is provided in case the time granted to file reply exceeds the total period of 45 days". While observing so, the Bench did not take into account the provisions of Section 13(2)(*b*)(*ii*) of the Consumer Protection Act, which provides that where the opposite party fails to file response to the complaint within the specified time provided in clause (*a*), "the District Forum shall proceed to settle the consumer dispute … on the basis of evidence brought to its notice by the complainant …".** After the said judgment, by Amendment Act 62 of 2002 (w.e.f. 15-3-2003), the legislature has provided that the District Forum shall proceed to settle the consumer dispute "*ex parte on the basis of the evidence*". The word "*ex parte*" has been added by the amending Act. **As we have observed hereinabove, the consequence of not filing the response to the complaint within the stipulated time is thus clearly provided for in the aforesaid sub-section, which has not been noticed by the Bench while deciding the aforesaid case.**
>
> **49.** In the said case of *J.J. Merchant* [*J.J. Merchant* v. *Shrinath Chaturvedi*, (2002) 6 SCC 635] , **while holding that the time-limit prescribed would be mandatory and thus be required to be strictly adhered to, this Court also considered the Statement of Objects and Reasons of the Consumer Protection (Amendment) Bill, 2002 (which was subsequently enacted as Act 62 of 2002 and has come in force w.e.f. 15-3-2003). The salient features of the same were "to provide simple, inexpensive and speedy justice to the consumers.…" and that "the disposal of cases is to be faster" and after noticing that "several bottlenecks and shortcomings have also come to light in the implementation of various provisions of the Act" and with a view to achieve quicker disposal of consumer complaints, certain amendments were made in the Act, which included "(*iii*) prescribing the period within which complaints are to be admitted, notices are to be issued to opposite party and complaints are to be decided". With this object in mind, in sub-section (2)(*b*)(*ii*) of Section 13, the opening sentence "on the basis of evidence" has been substituted by "ex parte on the basis of evidence". By this amendment, consequences of not filing the response to the complaint within the specified limit of 45 days was to be that the District Forum shall procced to settle the consumer dispute ex parte on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take action to represent his case within time.** For achieving the objective of quick disposal of complaints, the Court noticed that sub-section (3-A) of Section 13 was inserted, providing that the complaint should be heard as expeditiously as possible and that endeavour should be made to normally decide the complaint within 3 months, and within 5 months where analysis or testing of commodities was required. The provisos to the said sub-section required that no adjournment should be ordinarily granted and if granted, it should be for sufficient cause to be recorded in writing and on imposition of costs, and if the complaint

could not be decided within the specified period, reasons for the same were to be recorded at the time of disposing of the complaint.

52. After considering the provisions of the Code and the Consumer Protection Act, the reference was answered "that the law laid down by a three-Judge Bench of this Court in *J.J. Merchant* [*J.J. Merchant* v. *Shrinath Chaturvedi*, (2002) 6 SCC 635] should prevail". In coming to this conclusion, the following was observed in paras 25 and 26 of the said judgment : (*New India Assurance Co. Ltd. case* [*New India Assurance Co. Ltd.* v. *Hilli Multipurpose Cold Storage (P) Ltd.*, (2015) 16 SCC 20)

> "*25*. We are, therefore, of the view that the judgment delivered in *J.J. Merchant* [*J.J. Merchant* v. *Shrinath Chaturvedi*, (2002) 6 SCC 635] holds the field and therefore, we reiterate the view that the District Forum can grant a further period of 15 days to the opposite party for filing his version or reply and not beyond that.

26. There is one more reason to follow the law laid down in *J.J. Merchant* [*J.J. Merchant* v. *Shrinath Chaturvedi*, (2002) 6 SCC 635] . *J.J. Merchant* [*J.J. Merchant* v. *Shrinath Chaturvedi*, (2002) 6 SCC 635] was decided in 2002, whereas *Kailash* [*Kailash* v. *Nanhku*, (2005) 4 SCC 480] was decided in 2005. As per law laid down by this Court, while dealing *Kailash* [*Kailash* v. *Nanhku*, (2005) 4 SCC 480] , this Court ought to have respected the view expressed in *J.J. Merchant* [*J.J. Merchant* v. *Shrinath Chaturvedi*, (2002) 6 SCC 635] as the judgment delivered in *J.J. Merchant* [*J.J. Merchant* v. *Shrinath Chaturvedi*, (2002) 6 SCC 635] was earlier in point of time. The aforestated legal position cannot be ignored by us and therefore, we are of the opinion that the view expressed in *J.J. Merchant* [*J.J. Merchant* v. *Shrinath Chaturvedi*, (2002) 6 SCC 635] should be followed."

52. Needless to state, the amended provisions of Order V and Order VIII, CPC, are in *pari-materia* with the statutory regime applicable to commercial disputes. It would, therefore, be apposite to refer to the law laid down by the Hon'ble Supreme Court of India in **SG Contracts (India) Pvt. Ltd. v. K. S. Chamankar, (2019) 12 SCC 210**. Relevant para-16 is extracted as under:

> **"15.** The learned counsel appearing for the respondents then argued that it cannot be assumed that the learned Single Judge did not know about these amendments when he passed the first impugned order dated 5-12-2017 [*SCG Contracts (India) (P) Ltd.* v. *K.S. Chamankar Infrastructure (P) Ltd.*, 2017 SCC OnLine Del 12768] . We do not wish to enter upon this speculative arena. **He then argued that since this judgment permitted him to file**

> **the written statement beyond 120 days, it was an act of the court which should prejudice no man. This doctrine cannot be used when the res is not yet judicata. The 5-12-2017 order [*SCG Contracts (India) (P) Ltd.* v. *K.S. Chamankar Infrastructure (P) Ltd.*, 2017 SCC OnLine Del 12768] is res sub judice inasmuch as its correctness has been challenged before us.**
>
> **16. The learned counsel for the respondents then strongly relied upon the inherent powers of the court to state that, in any case, a procedural provision such as contained in the amendment, which may lead to unjust consequences can always, in the facts of a given case, be ignored where such unjust consequences follow, as in the facts of the present case. We are again of the view that this argument has also no legs to stand on, given the judgment of this Court in *Manohar Lal Chopra* v. *Seth Hiralal*** [*Manohar Lal Chopra* v. *Seth Hiralal*, 1962 Supp (1) SCR 450 : AIR 1962 SC 527] . In this judgment, the Court held: (SCR p. 470 : AIR p. 536, para 39)
>
> > "*39*. The suit at Indore which had been instituted later, could be stayed in view of Section 10 of the Code. The provisions of that section are clear, definite and mandatory. A court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit in certain specified circumstances. When there is a special provision in the Code of Civil Procedure for dealing with the contingencies of two such suits being instituted, recourse to the inherent powers under Section 151 is not justified."
>
> **Clearly, the clear, definite and mandatory provisions of Order 5 read with Order 8 Rules 1 and 10 cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what is stated therein.**
>
> **(emphasis added)**

53. The judgment relied upon by Mr. Rahul Sharma (Adv.) in **Ganesh Prasad Sah Kesari v. Lakshmi Narayan Gupta**, (1985) 3 SCC 53, is inapplicable to the facts of the present case. In light of the binding precedent laid down by the Constitution Bench in **New India Assurance Co. Ltd vs Hilli Multipurpose Cold Storage Pvt Ltd.**and under analogous statutory provisions applicable to commercial suits in **SG Contracts (India) Pvt. Ltd. v. K.S. Chamankar**, the amended provisions of Order V and Order VIII of the Code of Civil Procedure,

1908, cannot be held to be directory. Consequently, we hold that the said amended provisions are mandatory in nature.

<u>Issue Nos. IV & V</u>:

Whether the procedural law, a tool handmaid of justice can operate in such a manner, so as to destroy the substantive rights of the party in a litigation not arising of commercial disputes?

Whether there was any justification for incorporating the impugned provisions in the Code of 1908 as applicable to the U. T. of J&K?

54. As both issues are inextricably linked, they are collated for unified consideration and determination. The statutory amendments to Orders V and VIII, CPC, were manifestly designed to advance the cause of speedy justice and prevent protracted litigation. However, a striking dichotomy exists in the statutory framework: while the discretionary power of the Court to condone delay, even on demonstrably justifiable grounds, has been ousted to forfeit the defendant's right to file a written statement, the very same defendant remains legally competent to prefer a first appeal against an adverse judgment and decree, even beyond the prescribed period of limitation, by invoking Section 5 of the Limitation Act, 1963.

55. As already noticed above, draft Act was prepared in September 2018 solely with intention to curtail the delay in disposal of the civil suits, but cons of the amendments were never examined while drafting the Act. In **Sangram Singh v. Election Tribunal**, **AIR 1955 SC 425**, the Hon'ble Apex Court has observed under:—

> **"13. 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.

14. 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.**

15. The existence of such a principle has been doubted, and in any event was condemned as unworkable and impractical by O'Sullivan, J. in *Hariram Rewachand* v. *Pribhdas Mulchand* [*Hariram Rewachand* v. *Pribhdas Mulchand*, 1944 SCC OnLine Sind CC 16 : AIR 1945 Sind 98 at p. 102] . He regarded it as an indeterminate term "liable to cause misconception" and his views were shared by Wanchoo, C.J. and Bapna, J. in Rajasthan: *Sewa Ram* v. *Misrimal* [*Sewa Ram* v. *Misrimal*, 1951 SCC OnLine Raj 32 : AIR 1952 Raj 12 at p. 14] . **But that a law of natural justice exists in the sense that a party must be heard in a court of law, or at any rate be afforded an opportunity to appear and defend himself, unless there is express provision to the contrary, is, we think, beyond dispute.** See the observations of the Privy Council in *Balakrishna Udayar* v. *Vasudeva Ayyar* [*Balakrishna Udayar* v. *Vasudeva Ayyar*, 1917 SCC OnLine PC 32 : ILR (1917) 40 Mad 793 at p. 800] , and especially in *Tom Boevey Barret* v. *African Products Ltd.* [*Tom Boevey Barret* v. *African Products Ltd.*, 1928 SCC OnLine PC 46 : (1929) 29 LW 72 : AIR 1928 PC 261 at p. 262] where Lord Buckmaster said : (*Tom Boevey case* [*Tom Boevey Barret* v. *African Products Ltd.*, 1928 SCC OnLine PC 46 : (1929) 29 LW 72 : AIR 1928 PC 261 at p. 262] , SCC OnLine PC)

"… **no forms or procedure should ever be permitted to exclude thepresentation of a litigant's defence**.…"

Also *Hari Vishnu case* [*Hari Vishnu Kamath* v. *Syed Ahmad Ishaque*, (1954) 2 SCC 881 at pp. 907-908 : AIR 1955 SC 233 at p. 249] which we have just quoted.

In our opinion, Wallace, J. was right in *Venkatasubbiah* v. *Daliparthi Lakshminarasimham* [*Venkatasubbiah* v. *Daliparthi Lakshminarasimham*, 1925 SCC OnLine Mad 355 : AIR 1925 Mad 1274] in holding that : (SCC OnLine Mad para 5)

> "5. **One cardinal principle to be observed in trials by a Court obviously is that a party has a right to appear**

> **and plead his cause on all occasions when that cause comes on for hearing**”,

and that: (*Venkatasubbiah case* [*Venkatasubbiah* v. *Daliparthi Lakshminarasimham*, 1925 SCC OnLine Mad 355: AIR 1925 Mad 1274] , SCC OnLine Mad para 5)

> “5. … It follows that a party should not be deprived of that right, and in fact the Court has no option to refuse that right, *unless the Code of Civil Procedure deprives him of it.”*

56. In **State of Gujarat v. Ramprakash P. Puri and Others, 1970 (2) SCR 875**, the Hon'ble Apex Court has observed that Procedure has been described to be a hand maid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it.

57. In **Sushil Kumar Sen v/s State of Bihar, (1975) 1 SCC 774**, it has been observed as under:—

> **“6.** 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 justiciae where the tragic sequel otherwise would be wholly inequitable. In the present case, almost every step a reasonable litigant could take was taken by the State to challenge the extraordinary increase in the rate of compensation awarded by the civil court. And, by hindsight, one finds that the very success, in the review application, and at the appellate stage has proved a disaster to the party. Maybe, Government might have successfully attacked the increase awarded in appeal, producing the additional evidence there. But maybes have no place in the merciless consequence of vital procedural flaws. Parliament, I hope, will consider the wisdom of making the Judge the ultimate guardian of justice by a comprehensive, though guardedly worded, provision where the hindrance to rightful relief relates to infirmities, even serious, sounding in procedural law. **Justice is the goal of jurisprudence — processual, as much as substantive. While this appeal has to be allowed, for reasons set out impeccably by my learned brother, I must sound a pessimistic note that it is too puritanical for a legal system to sacrifice the end product of equity and good conscience at the altar of processual punctiliousness and it is not too radical to avert a breakdown of obvious justice by bending sharply, if need be, the prescriptions of procedure. The wages of procedural sin should never be the death of rights.”**
>
> **(emphasis added)**

58. In **Sakshi v. Union of India , (2004) 5 SCC 518,**the Hon'ble Apex Court observed as under:

> "*31. …* **There is major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are handmaiden of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the parties**."

59. The catena of judicial precedents adverted to hereinabove unequivocally establishes that procedural laws are designed to subserve the ends of justice and that the portals of justice should not, as a rule, be closed at the very threshold. In this context, it is pertinent to note that the Legal Services Authorities Act, 1987 was enacted with the statutory object of providing free and competent legal aid to the vulnerable sections of society, thereby ensuring that access to justice is not impeded by economic or geographical handicaps.

60. The Union Territories of Jammu & Kashmir and Ladakh do not merely comprise urban centers with easy proximity to courts; they encompass terrain that is mountainous, remote, and frequently rendered inaccessible by natural calamities, where travel to the court may consume several days. The strict statutory timelines under the amended provisions appear to have been framed primarily with urban litigants, who enjoy ready access to legal institutions, in contemplation.

61. Learned counsel for the respondent contended that since analogous timelines govern commercial suits, the impugned provisions cannot be

assailed as harsh. The answer to this contention lies in the Statement of Objects and Reasons of the Commercial Courts Act, 2015. That enactment was designed to address high-value commercial litigation in an increasingly competitive global economic landscape, aiming to enhance the ease of doing business, instill investor confidence, and assure foreign enterprises that procedural laxity would not imperil their financial interests. Consequently, no parity can be drawn between ordinary civil disputes involving everyday litigants and high-stakes commercial disputes governed by the Commercial Courts Act, 2015.

62. Also, the amended provisions fail to account for situations where it becomes virtually impossible for a defendant to file a written statement within the prescribed period. For instance, where a litigant is incapacitated by severe medical indisposition, the absolute operation of the provision works an irreparable hardship, stripping the defendant of the right to defend regardless of the existence of demonstrably sufficient cause. Similarly, where a defendant is trapped abroad due to circumstances beyond his/her control, the statutory guillotine operates automatically to extinguish the right of defense. Consideration must also be given to scenario where the preparation of a written statement is contingent upon obtaining certified copies of important relevant public documents. Where inordinate delay occurs in the issuance of such certified copies, for reasons attributable entirely to administrative machinery, the statutory period for filing the written statement may expire through no fault of the defendant. In such eventuality, the

unyielding operation of the amended provision deprives the defendant of the right to file a written statement, thereby severely impairing the right to effectively contest the suit on merits. Indubitably, there exist myriad contingencies wherein compliance with the statutory timeline becomes an impossibility due to events beyond human control. The amended framework, by completely ousting judicial discretion, deprives the Court of its inherent power to prevent injustice in genuine cases of force majeure or extreme hardship.

63. It would be apposite to refer to the well-settled legal maxim '***lex non cogit ad impossibilia***', which embodies the principle that 'the law does not compel the performance of the impossible.' This fundamental doctrine of jurisprudence has received statutory recognition under Section 56 of the Indian Contract Act, 1872.

64. It would be apt to take note of the observations made by the Hon'ble Apex Court in **Navtej Singh Johar v. Union of India, (2018) 10 SCC 1,** that *The Constitution Framers could have never intended that the protection of fundamental rights was only for the majority population. If such had been the intention, then all provisions in Part III of the Constitution would have contained qualifying words such as "majority persons" or "majority citizens".* ***Instead, the provisions have employed the words "any person" and "any citizen" making it manifest that the constitutional courts are under an obligation to protect the fundamental rights of every single citizen without waiting***

for the catastrophic situation when the fundamental rights of the majority of citizens get violated.

65. In ***Anita Kushwaha v. Pushap Sudan*, (2016) 8 SCC 509,** the Hon'ble Apex Court has observed as under:

> **"31.** Given the fact that pronouncements mentioned above have interpreted and understood the word "*life*" appearing in Article 21 of the Constitution on a broad spectrum of rights considered incidental and/or integral to the right to life, there is no real reason why access to justice should be considered to be falling outside the class and category of the said rights, which already stands recognised as being a part and parcel of Article 21 of the Constitution of India. If "*life*" implies not only life in the physical sense but a bundle of rights that makes life worth living, there is no juristic or other basis for holding that denial of "*access to justice*" will not affect the quality of human life so as to take access to justice out of the purview of right to life guaranteed under Article 21. We have, therefore, no hesitation in holding that access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. We need only add that access to justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. **We say so because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law. It is as much available in relation to proceedings before courts and tribunal and adjudicatory fora where law is applied and justice administered.** The citizen's inability to access courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws. Absence of any adjudicatory mechanism or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well."

66. In **Rupashree H. R. vs. State of Karnataka & Ors. 2024 LiveLaw (SC) 126**, the Hon'ble Supreme Court of India has held that right to defend oneself is a fundamental right under Part-III of the Constitution of India.

67. The 'right to defend' and the fundamental guarantee of 'access to justice' are intrinsic facets of Fundamental Rights under Part III of the Constitution of India. It is well settled that any statutory provision that impermissibly abridges or violates these rights cannot be sustained as *intra vires* the Constitution.

68. The circumstances adverted to hereinabove, though individual-specific, highlight a significant oversight. Moreso, while incorporating these rigid amendments, statutory provisions such as Section 89 and Order XXVII, Rule 5B of the Code of Civil Procedure, 1908, appear to have been overlooked, thereby rendering their underlying object virtually redundant. We are in agreement with the observations made by the High Court of Karnataka in **"Shri Basavaraj S. v/s State of Karnataka", WP No. 8032 of 2016** decided on **28-07-2026**, wherein it has been observed as under:

> "Another significant anomaly that appears to have escaped the attention of the Legislature while amending Order V by introducing the third proviso and proviso to Rule 10 of Order VIII, concerns the interplay between the amended provision and Section 89 of the Code of Civil Procedure. Section 89 casts a statutory obligation on the Court to explore the possibility of an amicable settlement, particularly in disputes involving family members where preservation of relationships is of paramount importance. In such suits, parties often seek time to negotiate and resolve their differences outside the adversarial process. Consequently, delay in filing the written statement may not be attributable to negligence or dilatory tactics, but to bona fide attempts at settlement encouraged by the Court itself. If the amended provision is construed as imposing an inflexible outer limit for filing the written statement, irrespective of the pendency of settlement efforts, it would defeat the very object underlying Section 89. More importantly, it would denude the Court of its inherent power to extend the time for filing the written statement in appropriate and exceptional circumstances, even where such extension would facilitate an amicable resolution of the dispute. The amendment, therefore, fails to account for this distinct class of civil disputes where the legislative policy itself mandates judicial intervention to foster reconciliation rather than expedite adversarial adjudication. Such an omission renders the

rigid prescription susceptible to criticism, as it overlooks situations in which procedural flexibility is indispensable to advance the larger objective of securing enduring and peaceful settlement of family disputes."

69. Similarly, Order XXVII, Rule 5B of the Code of Civil Procedure, 1908, casts an affirmative duty upon the Court to make every endeavour, in the first instance, to assist the parties in arriving at a settlement where the suit is instituted against the Government or a public officer. In litigation of this nature, parties invariably require time to explore amicable resolution. However, if the mandate of the amended provisions is strictly enforced, the Government or the public officer concerned risks forfeiting the right to file a written statement during the currency of such settlement talks. An unscrupulous litigant could easily exploit this rigid timeline by engaging in deceptive negotiations only to resile from them later, thereby achieving the ulterior object of extinguishing the defense of the State or public servant. Thus, the unyielding application of the amended provisions operates as an antithesis to the statutory mandate of Order XXVII, Rule 5B CPC.

70. In view of the detailed discussion hereinabove, we are of the considered view that while the respondent–Union of India was justified in enacting the impugned amendments to the Code of Civil Procedure, 1908, as applicable to the Union Territories of Jammu & Kashmir and Ladakh, with the salutary object of expediting civil litigation, the statutory framework suffers from systemic oversight. But at the same time, we feel that the amended provisions are not only

antithetical to several existing mandates of the Code, as highlighted above, but also fail to contemplate situations where compliance becomes a physical or legal impossibility due to circumstances beyond the defendant's control. The State Govt/Central Government/legislature ought to have provided a window through impregnable wall of timelines, enabling the courts to exercise discretion to allow the defendant to file written statement beyond the time limit provided under the amended provisions, in the exceptionally hard cases as held by the Hon'ble Supreme Court in **Salem Advocates Bar Association,(2005)6 SCC 344.**

Issue No. VI:

Whether the amended provisions require to be read down as done by the High Court of Karnataka, regarding the similar provisions incorporated in the CPC of 1908 through State amendment?

71. In view of the foregoing discussion, we conclude that while the amended provisions effectively divest the Civil Court of discretion to entertain a written statement beyond the stipulated statutory timeframe, thereby advancing the salutary objective of curbing delay in civil adjudication, they simultaneously create severe statutory friction. Where these provisions operate in direct conflict with other existing mandates of the Code of Civil Procedure, 1908, and fail to accommodate situations where compliance is rendered impossible due to force majeure or circumstances beyond the defendant's control, they must be read down to prevent procedural injustice. In such exceptional eventualities, the Court must retain the jurisdiction to permit the filing

of a written statement beyond the prescribed deadline. We are equally mindful that the impugned notification, under which these amendments were brought into force, constitutes an exercise of delegated legislation and must yield to overarching constitutional and statutory principles. In **State of Rajasthan & Ors. v. Sanyam Lodha**, **(2011) 13 SCC 262**, the Hon'ble Apex Court has held that *it is true that any provision of an enactment can be read down so as to erase the obnoxious or unconstitutional element in it or to bring it in conformity with the object of such enactment. Similarly, a rule forming part of executive instructions can also be read down to save it from invalidity or to bring it in conformity with the avowed policy of the Government. When courts find a rule to be defective or violative of the constitutional or statutory provision, they tend to save the rule, wherever possible and practical, by reading it down by a benevolent interpretation, rather than declare it as unconstitutional or invalid.*

72. In **Subramanian Swamy and Ors. v. Raju Thr. Member Juvenile Justice Board and Anr.**,**(2014) 8 SCC 390**, the Hon'ble Supreme Court has held as under:—

> **"61.** Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the "reading down" doctrine can be summarised as follows. **Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. The above is a fairly well-established and well-accepted principle of interpretation which having been reiterated by this Court time and again would obviate the necessity of any recall of the huge number of precedents available** except, perhaps,

the view of Sawant, J. (majority view) in *DTC* v. *Mazdoor Congress* [1991 Supp (1) SCC 600] which succinctly sums up the position is, therefore, extracted below:

> "*255*. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible—one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only is it no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so."

73. We are conscious of the proposition of law that laid down by the Hon'ble Apex Court in **Allahabad University v Geetanjali Tiwari (Pandey) and others, (2024) 20 SCC 23**, wherein it has been held that harshness of a statute is no reason to read down the same, where its plain meaning is unambiguous and perfectly valid. It has been further observed by the Hon'ble Apex Court that "Reading down" of a provision is a subsidiary rule of interpretation of statutes, which the courts tend to employ in situations to save the subordinate legislation like a rule or a regulation, wherever possible and practical, by reading it down by a benevolent interpretation, rather than declaring it as unconstitutional or invalid. However, it has been clarified that it is to

be used sparingly, and in limited circumstances. Additionally, it is clear that the act of reading down a provision, must be undertaken only if doing so can keep the operation of the statute "*within the purpose of the Act and constitutionally valid*".

74. Thus, we are of the considered view that in order to uphold the validity of the amended provisions, so as to achieve the salutary object of expeditious disposal of cases, the timeline provided under the amended provisions is required to be read down**.** However, while doing so, this Court has to keep in mind the legislative intent of incorporating forfeiture clause in proviso to Rule 1 of Order VIII CPC. A balance has to be struck between the legislative intent of doing away with the delay in proceedings of civil cases and the need to save the power of a civil Court to take care of extreme situations where a defendant has genuinely been incapacitated in filing the written statement within the statutory limit of 120 days due to the reasons beyond his control. To achieve this objective, only in exceptional circumstances, which make it impossible for the defendant to adhere to the timeline of 120 days in filing the written statement that the Court would be justified to extend the period for filing the written statement and not otherwise. These impossible situations may include prolonged serious ailment of a defendant, natural calamities, physical or legal disability of a defendant, delay in obtaining indispensable public documents, which is neither intentional nor a result of negligence, the delay caused due to exploration of possibilities of

resolution of dispute between the parties by adopting alternative dispute resolution mechanisms as provided under section 89 and Order XXVII Rule 5B of the CPC. These situations are only illustrative in nature. Similar other situations, which make it impossible for a defendant to file written statement within the period of 120 days of service of summons upon him/her would justify the action of the Court in extending the period of filing written statement beyond 120 days. In short the defendant will have to show something more than exceptionally hard situation, for persuading the court in relaxing the timeline of 120 days.

75. We would hasten to add that while exercising the power to extend the time in filing the written statement beyond the mandatory time line, the Court must compensate the plaintiff with adequate costs and it has to be borne in mind that the burden to prove that it was impossible for the defendant to file written statement within the statutory time frame would lie heavily upon him/her, which he/she will have to discharge by placing on record cogent and convincing material.

Conclusion:

(a) The amended provisions of **Order V and VIII** of **CPC** are constitutionally valid;

(b) The statutory period of 120 days must be adhered to strictly and under normal circumstances, if the defendant violates the timeline provided under the amended **Order V and Order VIII of CPC**, the right of the defendant shall stand forfeited; and

(c) In exceptionally hard circumstances, where the defendant is incapacitated to file the written statement beyond the timeline provided under amended **Order V & VIII of CPC of 1908**, for the reasons beyond his control, permission can be granted by the court, for filing the written statement beyond the mandatory timeline, subject to payment of costs and after recording reasons for doing so. However, the discretion shall be exercised by the Court sparingly, cautiously only in exceptionally hard cases, where it is impossible for the defendant to file the written statement within the prescribed time line.

76. Having adjudicated the validity of the amended provisions, we direct that the individual petitions be segregated and listed before the learned Single Judge during the 4th week of October, 2026 in a staggered manner.

77. The record be returned to the Office of the learned Sr. A.A.G.

78. Copy of this judgment be placed on each file.

(SANJAY DHAR)
JUDGE

(RAJNESH OSWAL)
JUDGE

Jammu
28.09.2026
Rakesh PS

Whether the **judgment** is speaking: Yes
Whether the **judgment** is reportable: Yes