

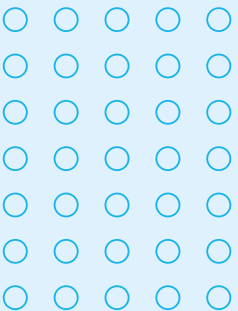


# Monthly e-Newsletter

of Judicial Training & Research Institute, U.P.

Vineet Khand, Gomti Nagar, Lucknow

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**Mr. Justice Om Prakash Shukla**  
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## TRAINING ACTIVITIES IN THE INSTITUTE

### **I. 05 Days Refresher Training Programme for Civil Judges (J.D.) on Civil, Criminal, CIS 3.1 and Mediation Matters**

A refresher training programme on civil and criminal matters clubbed with 02 days advance training on CIS (District Court) and 01-day mediation training for referral judges with special reference to directions of MCPC was organized at the Institute. A batch of **52 Civil Judges (J.D.)** who were nominated by the Hon'ble High Court to attend the refresher training programme from **30.01.2023 to 03.02.2023** participated in the refresher training programme. This refresher training programme was organized in the institute which was inaugurated by Sri Vinod Singh Rawat, Director of the institute on 30.01.2023.

The refresher training programme covered diverse areas of discussion from manners and etiquette to injunction and breach of injunction, from preliminary inquiry to suit valuation, compromise, execution, disposal of property, FIR, cognizance, appreciation of medico-legal report, principles of sentencing, conviction order and victim compensation, domestic violence, NI Act etc.

The participants were also imparted training on ADR Mechanism including the role and duties of referral judges in the process of settlement through the dispute resolution mechanism and CIS 3.1 training for two days on various aspects such as e-court project, advance features of CIS, management information system, NJDG, e-court services mobile app and website for district court, justIS app etc. To make the programme interactive-participative, participants were required to make presentations on various aspects of law and justice in the context of latest pronouncements of Hon'ble Supreme Court of India and Hon'ble High Court of Judicature at Allahabad.

### **II. 05 Days Management Development Programme/Capacity Building Programme for Judicial Officers of U.P., at IIPA, New Delhi**

In compliance of the directions of the Hon'ble State Court Management System (SCMS) Committee of Allahabad High Court, the Institute is regularly organizing Management Development Training Programme, for Judicial Officers of Uttar Pradesh at IIPA, New Delhi.

During the month of January, 2023 MDP training programmes were organized. The details of the Programmes is mentioned in the table below:

<b>Sl. No.</b>	<b>Name of Programme</b>	<b>Duration</b>	<b>No. of Participants</b>
1.	Management Development Programme for Judicial officers of U. P.	03.01.2023 to 07.01.2023	41
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## SHORT ARTICLES

### **Time limit for Filing Written Statement (Post Amendment in Commercial Court Act): Directory v. Mandatory**

By Ms. Priti Chaudhary\*

#### **Introduction**

The written statement is the primary defence of a defendant. Accordingly, a defendant gets the first opportunity to raise his defence or state his point of view in the suit through a written statement. However, the defendant shall not be at liberty to file the same at any time during the pendency of the suit; he must file the written statement within the prescribed time limit prescribed under Civil Procedure Code, 1908 (hereinafter referred to as CPC). The statutory provision regarding filing a written statement is laid down in Order V Rule 1(1), Order VIII Rule 1 of CPC, that a defendant shall, within thirty (30) days from the service of summons on him, present a written statement of his defence. However, the Amendment Act 22 of 2002 of CPC enables the Court to extend the time for filing the written statement maximum for ninety (90) days from the service of summons, on recording sufficient reasons. In 2015, certain amendments were made to the CPC in the wake of the enactment of the Commercial Courts, Commercial Division, and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as the 'Commercial Court Act'). Substitution of the second proviso to Order V Rule 1(1) of the CPC and the new proviso to Order VIII Rule 1 of the CPC is one such relevant amendment. It provides that if the defendant fails to file the written statement within 30 days, he shall be allowed to file the same, on the recording of sufficient reasons and on the payment of such costs as deemed fit by the Court on maximum for one hundred twenty (120) days from the service of summons. It further says that on expiry of the said 120 days, the defendant shall forfeit the right to file the written statement, and the Court shall not take the same on record.

The first and new proviso to Order VIII Rule 1 and the second proviso to the Order V Rule 1(1) of the CPC are significant for understanding the applicability and nature of the same.

#### **Order VIII Rule 1: (pre-amendment stage)**

#### **Prior to the amendment in CPC in the light of the Commercial Courts Act**

Before the amendment, there was no distinction between commercial or non-commercial/regular suits. Thus, the provisions laid down under Order VIII and the other ancillary or corollary rules prescribed under the CPC applied to all the suits. However, in 2005, the Hon'ble Supreme Court in **Salem Advocate Bar Association v. Union of India (2005) 6 SCC 344** held that the provision for a maximum period of ninety days is not mandatory; it is a directory in nature; that enables the Courts to allow the filing of written statement beyond 90 days however, it is directed that the Courts shall keep in mind that the legislature has fixed the upper time limit of 90 days and thus, they shall not extend the time frequently and routinely however, the time can be extended only in exceptionally hard cases. In a nutshell, before the 2015 amendment, 90 days rule read with the **Salem Advocate case (supra)** was applicable in all

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\* Civil Judge (Senior Division), District Court, Bulandshahar

the suits without carving out any particular category or categories. Also see: **Bharat Kalra v. Raj Kishan Chabra [CIVIL APPEAL NO.3788 OF 2022, SC, 09.05.2022]**

### **Order VIII Rule 1: (post-amendment stage)**

#### **Since the amendment in CPC in the light of the Commercial Courts Act**

The second proviso added through the above amendment brought in 120 days rule. The Hon'ble Supreme Court carved out an exception to the **Salem Advocate case (supra)** in **SCG Contracts India Private Limited v. K. S. Chamankar Infrastructure Limited (2019) 12 SCC 210**. It held that the 120 days rule (second proviso to Order V Rule 1(1)) shall be invoked in the suits related to commercial disputes under Commercial Courts Act only. In other words, in normal/ regular/non-commercial suits, the pre-amendment rules read with the interpretation given in the Salem Advocate case shall be applicable. Whereas, in the commercial suits, the 120 days rule shall apply in terms of a new proviso to Order VIII Rule 1, second proviso to Order V (1)(1) r/w. Order VIII Rule 10 CPC. The Hon'ble Supreme Court held that

*“A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 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.”*

Thus, it clarifies that the Court has no further power to extend the time beyond the period of 120 days in commercial suits.

#### **The period for filing of a written statement when an application under Order 7 Rule 11 CPC is filed or pending**

Order VII Rule 11 proceedings are independent of the filing of a written statement once a suit has been filed. It is held in **SCG Contracts Case (supra)** that-

*“filing of an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement.”*

#### **Applicability of Section 151 of CPC**

The Court shall not exercise the Inherent power under Section 151 of CPC in deciding the application under proviso(s) to the Order VIII Rule 1 of the CPC. It is held in **SCG Contracts Case (supra)** that-

*“Clearly, the clear, definite, and mandatory provisions of Order V read with Order VIII Rule 1 and 10 cannot be circumvented by recourse to the*

*inherent power under Section 151 to do the opposite of what is stated therein.”*

### **Applicability of limitation period in cases transferred from ordinary civil Courts to Commercial Courts**

In a case, the stipulated 120 days period expired before the ordinary Civil Court transferred the suit to the Commercial Court. The defendant filed a written statement along with the application for condonation of delay—the Ld. Commercial Court dismissed the application on the basis that the timeline prescribed under the second proviso to the Order V Rule 1(1) CPC is mandatory. Further, it forfeited the right of the defendant to file a written statement. The Hon’ble Supreme Court held that where the suit was instituted before the ordinary Civil Court and transferred to a Commercial Court after the expiry of 120 days, the interpretation given in the Salem Advocate case (supra) to the proviso to Order VIII Rule 1 CPC shall be applicable. **[Raj Process Equipments and Systems Pvt. Ltd. & Ors. vs. Honest Derivatives Pvt. Ltd. [CIVIL APPEAL No. 8089 OF 2022, SC, decided on 03.11.2022]**

### **The consequence of filing an application for condonation of delay beyond 120 days when a written statement is filled beyond 30 days but within 120 days**

The provisions prescribing a limitation period for filing a written statement has no applicability in filling the condonation application. It is held in **M/s. A P Distributors v. M/s. Ok Play India Pvt. Ltd. [Special Leave Petition (C) Nos.9733-9734/2022, SC decided on 12.09.2022]** that-

*“Having heard learned counsel for the respective parties and in the facts and circumstances of the case and considering the fact that the written statement was filed on the 34th day of the service of notice of summons, however, the application for condonation of delay was filed which was beyond the period of 120 days, the High Court has taken too technical view in setting aside the order passed by the learned Commercial Court directing to accept the written statement filed on behalf of the appellants/defendants. The High Court was not justified in setting aside the order passed by the learned Trial Court directing to take the written statement on record.”*

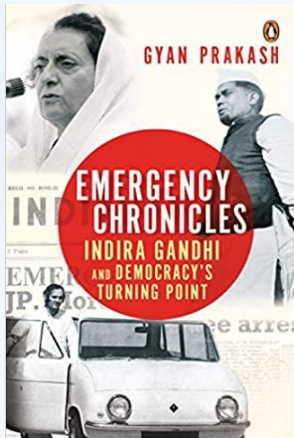
### **Conclusion**

1. The interpretation given in the Salem Advocate case (supra) shall be applicable in ordinary Civil Courts in Order VIII Rule 1 of CPC. In other words, the provision in relation to ordinary civil suit is directory.
2. The SCG Contracts Case (supra) interpretation shall be applicable in commercial Courts. In other words, the amended rules applicable in commercial suits are mandatory.
3. The Court shall not exercise its inherent powers under Section 151 of CPC to condone delay beyond 120 days in filing written statements in commercial suits.
4. Filing or pendency of an application for rejection of plaint cannot retrieve an expired time period for filing a written statement.



## BOOK REVIEW

By Dr. Humayun Rasheed Khan\*



### **Title of the Book**

Emergency Chronicles: Indira Gandhi and Democracy's Turning Point

### **Author**

Gyan Prakash

### **Publisher**

Penguin Viking

### **Year of Publication**

2018

Any work on emergency period (1975-77) reminds us of the painful past and the dark days of Indian democracy. So, reading any such book is a difficult task even for book lovers. However, a good author can reduce the nostalgic feelings that come with the subject by his style of writing, lucidity and analysis of different issues connected directly or indirectly with the subject. This is well reflected in the present work by Princeton University historian of Indian Origin.

The beauty of this work is that the author has analyzed political and legal issues in a broader perspective but at the same time did not neglect the connected minor issues such as the humiliation, illegal arrest and wrongful detention of Prabir Purkayastha. The chapter scheme, presentation and analysis reminds us the magic of "Mumbai Fables". The best thing about this book is that despite many books already available on the subject matter, it keeps the interest of the reader intact.

The book provides minute details as to the violations of constitutional provisions in the worst manner which was actually the most shameful part of the whole story. The hidden and nefarious designs with which Sanjay Gandhi abused the constitutional spirit under the protection and patronage of the then Prime Minister of India- Mrs. Indira Gandhi is the most painful part of the whole story. Almost all well-known leaders of opposition parties were humiliated, arrested and put behind the bars for a long time which clearly shows that it was a 'dark period' of Indian political and constitutional history.

However, the book fails to generate the same level of interest which 'Mumbai Fables' did. We may wait with the expectation that the author will come back with another 'Mumbai Fables' like rare and outstanding work in future.

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\*Additional Director (Research), JTRI, U.P., Lucknow

## LEGAL JOTTINGS

“

“The trial court has the power to summon additional accused when the trial has proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned.”

**Hon’ble Mr. Justice A. S. Bopanna**  
**Judge, Supreme Court of India**  
*Sukhpal Singh Khaira v. State of Punjab,*  
*AIR 2023 SC 1: AIR Online 2022 SC 1078*

”

## SUPREME COURT

### **1. Devendra Nath Singh v. State of Bihar and others, (2023) 1 SCC 48**

*Sections 173(8) r/w S. 156 of Criminal Procedure Code, 1973 - Further investigation or direction by the Magistrate.*

It was held that the powers of the Magistrate to ensure proper investigation in terms of S. 156, include the power to order further investigation in terms of S. 173(8) after receiving the report of investigation. Whether further investigation should or should not be ordered, was to be held to be within the discretion of the Magistrate and such discretion should be exercised on the facts of each case in accordance with law.

Criminal Procedure Code, 1973 Ss. 482, 156, 173(8), 190(1)(c) and 2(h) Further investigation or direction by High Court while exercising inherent powers under S. 482 CrPC in petition challenging order taking cognizance by the Magistrate against the petitioner. R-3 - Propriety of, without hearing appellant, whose actions/omissions were directed to be investigated by the impugned order.

### **2. Rahul v. State of Delhi, Ministry of Home Affairs and another, (2023) 1 SCC 83**

*Evidentiary Value of DNA evidence (Section 45 of Indian Evidence Act, 1872)*

It has been held that the DNA evidence is in the nature of opinion evidence as envisaged under S. 45 and like any other opinion evidence, its probative value varies from case to case.

Penal Code, 1860 - Ss. 302, 365, 367, 376(2)(g) and 201 r/w S. 34 Circumstantial evidence: Absence of identification of accused, doubt regarding arrest and recovery of incriminatory materials, absence of clarity as to timing of death, infirmities with regard to timing and manner of collection of samples/forensic evidence i.e. the report regarding the DNA profiling, and absence of fair trial. Hence, conviction reversed.

Section 357A of Criminal Procedure Code, 1973 – Victim Compensation - Claim by family members of deceased girl, who was killed after gang rape. It was held that it, cannot be denied even in case of acquittal of accused.

Section 3 of the Evidence Act, 1872 - Circumstantial evidence - Conditions need to be fulfilled by the prosecution or the five golden principles, which constitute the panchsheel of the proof of a case based on circumstantial evidence, reiterated.

**3. Gireesan Nair and others v. State of Kerala, (2023) 1 SCC 180**

*Section 9 of the Indian Evidence Act, 1872 - Test identification parade (TIP) –* Witnesses having ample opportunity to see the accused before holding TIP Effect of not only witnesses themselves deposed having seen the suspects before the TIP, but the accused also from the very beginning, claimed that suspects were all photographed, video graphed and were shown to the witnesses. Resultantly, the TIP, was held to be a mere formality, having no legal value and, therefore, in the absence of any other incriminatory material, conviction, was not sustainable and set aside. Holding test identification parade (TIP) in presence of a police officer or IO. TIP conducted in the presence of a police officer, held, inadmissible in light of S. 162 CrPC.

When the eyewitnesses neither disclose names nor identities of the accused participating in the crime, conduct of a TIP becomes necessary. Object of conducting a TIP and its evidentiary value, reiterated. Burden to prove TIP being conducted in a fair manner and that all necessary measures and precautions were taken before conducting the TIP was held to be on the prosecution and not on the defence.

Moreover, an appeal challenging conviction but dismissal without considering appellant's contention was held, a serious infirmity, resulting in, no legal judgment in the eye of the law.

**4. Solomon Selvaraj and others v. Indirani Bhagawan Singh and others, (2023) 1 SCC 349**

Order 33 and Section 11 - Application to file suit as indigent person. Refusal on the ground of res judicata and lack of cause of action. Legality of rejection of application to sue as indigent person. Order that may be passed and remedy available to applicant.

**5. Katta Sujatha Reddy and another v. Siddamsetty Infra Projects Private Limited and others, (2023) 1 SCC 355**

*Specific Relief Act, 1963-Ss. 10 and 14(1)(a) (as amended by 2018 Amendment Act) -* Nature and effect of 2018 Amendment - Mandatory nature of Section 10 post the amendment, when the requisite ingredients are fulfilled. Effect of substitution of Section 14(1)(a) has been explained.

Section 10 is prospective in application, as the amended Section 10 is substantive in nature. It was further held that Section 10 has been converted into a mandatory provision by the amendment, prescribing power that the courts have to exercise when the requisite ingredients are fulfilled.

Specific Relief Act, 1963 - Sections 9, 10, 16 and 20 - Where time is of the essence of the contract, and there was breach by the party seeking specific performance, and also suit preferred beyond the limitation period of three years, relief can be granted.

Limitation Act, 1963- Article 54 Suit for specific performance of contract-Issuance of legal notice-When insufficient to get past the bar of limitation. It has been held that it is only in a case where the time period for performance is not fixed that the purchaser can take recourse to the notices issued and the vendors' reply thereto. In the case at hand, it was held that fixed time period was clearly mandated by the agreements to sell.

## ALLAHABAD HIGH COURT

### 1. **Rishi Talwar v. State of U.P, 2023(3) ADJ 628 (DB)**

The matter relates to circumstantial evidence. It was observed that the doctrine of established "last seen together" shifts the burden of proof on accused requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard would give rise to a very strong presumption against him.

In an established last seen case, the prosecution exempted to prove exact happening of incident, as accused himself would have special knowledge of incident and thus would have burden of proof as per Section 106 Evidence Act, although the initial burden of proof is on prosecution to adduce sufficient evidence pointing towards the guilt of the accused. The careful scrutiny of the evidence leads us to the definite conclusion that the last seen theory has gone and, at this juncture, we also find that the learned trial court relying upon the last seen theory has committed a grave error.

### 2. **Mohd. Aslam v. State of U.P, 2023(2)ADJ 82**

The evidence is circumstantial and in order to prove the crime based on circumstantial evidence, all the circumstances must indicate that the author of the crime is the accused and the accused alone and there is no possibility of being committed the crime by anybody else. The chain of the circumstances should be complete and no shadow of reasonable doubt must be there.

It is painful for this Court to note that four persons of the family were done to death by poisoning but the real culprit of the crime could not be brought to book. So far as the appellant-accused Mohd. Aslam is concerned the prosecution has failed to conclusively establish by cogent evidence that it was the accused/appellant who committed the murder of four deceased.

Hence, the impugned judgment and order deserves to be set-aside and is set-aside. The appeal was allowed.

By –

**Dr. Humayun Rasheed Khan,  
Additional Director (Research),  
JTRI**

## Judicial Training and Research Institute, U.P., Lucknow

The Institute was established by the Government of Uttar Pradesh in pursuance of a decision taken at All India Conference of the Chief Justices of High Courts in August/September, 1985 in New Delhi. This landmark conference which was also attended by the Chief Ministers and the Law Ministers of the States, mooted the idea of providing institutional induction and in-service training to the judges of the district courts in the country. The initiative of the state government after being readily agreed to by the Hon'ble High Court of Judicature at Allahabad, saw the Institute coming into existence and becoming functional on 25th April, 1987 with Hon'ble Mr. Justice K.N. Goyal as its first honorary Director. Sri Vinod Singh Rawat is its present Director.

The institute has been established with the overall vision of ensuring ceaseless upgradation of skills and appropriate attitudinal reorientation through induction level and in-service training in consonance with the imperatives of national and global environment.

In the training programmes, case studies, discussion sessions, exercises and activity based studies; book review and case law presentation are used extensively. To make the discussion effective, background material is given before discussion. This helps the trainees to develop analytical skills and decision-making power in addition to enable them in writing orders/judgments.

Keeping in view that in a healthy mind rests a healthy body, the institute has established and developed a gymnasium with latest equipments and machines. The physical training is compulsory part of the training programmes organized by the institute. The facilities of gym have been made available to the trainee officers as well as faculty members.

The Institute believes in continuous involvement of officers in sports activities to relieve the stress and keep them healthy. Besides Volley Ball and Carom, the hostel is also having Badminton Court as well as Table-tennis facilities. The hostel is fully furnished and equipped with the best house-keeping and hospitality facilities. The institute has a big air-conditioned Dining Hall with a dining capacity of about 150 persons at a time. The dining Hall is housed with the officers' hostel in one and the same building.

Judicial reasoning, indeed, is both an art and a science to be cultivated by every judge through study, reflection and hard work. The institute has a beautiful and big library housed into two spacious air-conditioned halls in the 'Training Wing' with one being dedicated to law books, law digest, encyclopedia, commentaries and general books including classics, biographies, fictions (Hindi and English both) memoirs, letters, speeches, words and phrases, books of philosophy, religion, history, politics, computer, management, personality development etc. and the other wing is exclusively meant for storing Journals. This centre of knowledge has more than **25000 books**. The institute has been subscribing **15 Law Journals** of varied nature, **seven newspapers** and **four magazines**. The library has All England Law Reports from 1936 to 2014, Halsbury's Laws of India from 2004 to 2008, Halsbury's Laws of England from 1973 to 1987 and Corpus Juris Secundum from Vol. 1 to 101A, Canadian Law reports, American Law Reports Annotated and Law Commission of India Reports. The institute is working on to develop e-knowledge hub and e-library in near future.