

## Subir Kumar Dey Vs Joya Dey @ Joya Mahajan

**Court:** Gauhati High Court

**Date of Decision:** Aug. 23, 2005

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 8 Rule 1, Order 8 Rule 10  
Constitution of India, 1950 â€” Article 227

**Citation:** (2006) 2 GLR 42 : (2006) 2 GLT 298

**Hon'ble Judges:** A.H. Saikia, J

**Bench:** Single Bench

**Advocate:** Md. Aslam and G.N. Sahewalla, for the Appellant; S. Banik, for the Respondent

**Final Decision:** Dismissed

### Judgement

A.H. Saikia, J.

Heard Mr. G.N. Sahewalla, learned senior counsel, assisted by Md. Aslam, learned Counsel for the petitioner and Mr. S.

Banik, learned Counsel for the respondent.

2. This petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 28.4.2004 passed by the

learned Addl. District Judge, Dibrugarh in T.S.(D) No. 2/01 renumbered as Title Suit (D) 57/03 wherein the petitioner was directed to pay

maintenance pendente lite to the respondent as per order dated 23.5.2003 passed by the learned District Judge, Dibrugarh in the same case.

3. The impugned order dated 28.4.2004 may be noticed as under:

Parties appeared before court along with their Id. counsel. It is submitted by Id. counsel for the petitioner/respondent that the petitioner/opp. Party

has not paid any amount towards maintenance pendente lite. Petitioner shall pay the maintenance pendente lite to the opp. party as per order dated

23.5.2003 respondent submitted written statement. As such the suit will proceed.

Fixing 12.5.2004 for issue and documents.

4. On close perusal of the impugned order dated 28.4.2004 as well as the materials available on record, it would appear that the initial order dated

23.5.2003 on the basis of which the impugned order has been passed, has not been challenged. That being so, this Court does not find any

illegality and/or irregularity in the impugned order calling for interference by this Court in its superintending/revisorial jurisdiction vested under

Article 227 of the Constitution of India.

5. At this stage Mr. Sahewalla, learned senior counsel has forcefully submitted that the petitioner is mainly aggrieved by the acceptance of the

written statement which has been filed after a long gap of time of 2 years after appearance of the respondent in the instant suit. It is contended by

him that the learned Trial Court flouted the mandatory provisions of Order 8, Rules 1 and 10 of the CPC ("the C.P.C.") in allowing the respondent

to file her written statement at a belated stage and as such, this impugned order, so far acceptance of the written statement submitted by the

respondent is concerned, is liable to be set aside.

6. From proper scrutiny of the records made available before this Court including the order dated 23.5.2003, it would go to show that the

Opposite party entered appearance on 27.6.2001 but no written statement was filed. Impugned order dated 28.4.2004 indicates that the

respondent has submitted written statement. However, present record does not indicate how many dates were granted to the opposite party to file

written statement. The amended provision of Order 8, Rule 1 CPC which came into force w.e.f. 1.7.2002 provides a time frame of 90 (ninety)

days for submission of written statement from the service of summons. That being so, for compliance of this 90 (ninety) days time schedule in the

instant case, the period shall commence from 1.7.2002 though the opposite party appeared in 2001 more so, the Apex Court in a recent case of

Kailash Vs. Nanhku and Others, held that the provisions of Order 8, Rule 1, CPC are directory in character and not mandatory. Further it was

held that though an obligation is cast on the defendant/opposite party to file a written statement within the time prescribed, the provisions did not

deal with nor specifically took away the power of the Court to accept a written statement on record though filed beyond the time as provided

under Order 8, Rule 1 CPC. In view of the same in the instant case, the acceptance of the written statement so submitted by the respondent by the

trial courts is hereby approved in the light of Kailash's case (supra).

7. That apart, when the petitioner himself failed to comply with the Court's specific direction given on 23.5.2003 to make payment of maintenance

pendentilite, it appears that no grave injustice has been done to the petitioner in accepting the written statement submitted by the respondent, by the

trial Court.

8. It is settled law that jurisdiction under Article 227 of the Constitution of India must be sparingly exercised and that too only to correct

jurisdictional error and patent illegality. In the instant case, taking into account the facts and circumstances in its entirety and having regard to

Kailash"s case (supra), this Court does not find any jurisdictional error or any patent illegality in the impugned order.

9. Consequently, this petition fails and stands dismissed.

10. Interim order passed on 11.5.2004 shall also stands vacated.