

KABG040004092019



ORDER ON I.A.No. 7 & 8 UNDER ORDER 151 of CPC

The defendants have filed I.A. under Section 151 of CPC to recall the stage and permit the defendants to file written statement.

2. In an affidavit filed in support of I.A No.7 and 8 the defendants submitted that due to ill health there could not be effective communication between counsel and defendants. There after mother of defendant No.1 expired hence the defendants could not file written statement before this court. Hence, prays to allow the application.

3. Per contra, Advocate for plaintiff filed objection by contending the reason assigned in the affidavit are denied and the application of defendants is at belated stage and not maintainable. Hence prays to reject the application.

4. Heard on both side.

5. The plaintiff has filed this suit by seeking relief of partition and separate possession and perpetual injunction. After service of summons the defendants appeared through their counsel but not filed written statement. The evidence of PW-1 recorded and plaintiff in order to prove his case got marked 14 documents. After closure of evidence on plaintiff side after hearing the arguments the case posted for judgement. At this juncture the defendants

come up with this application to permit them to file the written statement. Learned counsel for plaintiff relied on decision reported in **ILR 2004 KAR 2215** in the case of **Rabiya.Bi. Kassim vs. Country Wide Consumer Financial Service Limited** to contend that, once the matter has been heard and posted for judgement nothing is required to be done except to pronounce the judgement. Interlocutory application to reopen the case and to record to further evidence after the matter is reserved for pronouncement of judgement is not permissible. In the case on hand the defendants have not recalled the stage to lead further evidence instead to file written statement to resist the claim of plaintiff. If defendants are allowed to file written statement no hardship would be caused to the plaintiff because audi alterem partem is the Rule of law. However, inconvenience caused to the plaintiff will be compensated by imposing cost. Hence, I proceed to pass the following;

ORDER

The defendant No.7 & 8 filed by
defendants are hereby allowed with a cost of
Rs.300/- each.

For written statement by defendant

Call on 18.03.2023

Sd/-

(Sharmila Kamath K)
I Addl. Civil Judge & JMFC,
Belagavi.