

**ORDERS ON IA.NO.III AND IV FILED UNDER ORDER
VIII RULE 1(A) R/W. U/SECTION 151 OF CPC**

At the stage of plaintiff evidence, I.A. No.III is filed by the defendant No.1 with a prayer to set aside the order dated 30.05.2022 to the effect that 'the written statement of the defendants taken as Nil' and permit the defendant No.1 to 5 to file their written statement.

I.A. No.IV is filed by the defendant No.7 with a prayer to set aside the order dated 06.01.2023 to the effect that the 'written statement of the defendant No.7 taken as Nil' and permit the defendant No.7 to file his written statement.

2. I.A. No.III is accompanied with an affidavit of the defendant No.1, wherein it is stated that the present suit filed by the plaintiff for mandatory in respect of the suit property. Thereafter, she appeared through his counsel. When the case was posted for filing of their written statement on 30.05.2022, as the compromise talks were going on between them and the plaintiff through the mediators, she could not contact his counsel and instruct him to prepare the written statement. In the mean time, the case was called and order was passed as

‘the statutory period has elapsed and the written statement of defendant No.1 to 5 taken as Nil’. Further it is stated that there is no intentional absence or laches on her part in not filing the written statement within the stipulated period, but same is caused due to the bonafide reasons. He has got very good case on merits and there are every chance of his success in this case. Hence, prayed to allow the application.

3. I.A. No.IV is accompanied with an affidavit of the defendant No.7, wherein it is stated that when the case was posted for filing is written statement on 06.01.2023, she was out of station on his personal work, hence she could not contact her counsel and instruct to prepare the written statement. In the mean time the case was called and order was passed as ‘the written statement of defendant No.7 taken as Nil’. Further it is stated that there is no intentional absence or laches on her part in not filing the written statement within the stipulated period, but same is caused due to the bonafide reasons. Hence, prayed to allow the application.

3. The said applications have been resisted by the plaintiff by filing separate objections to I.A. No.III and IV, wherein she denied the contents of the affidavit as false and contended that the defendants have not assigned any proper reasons for not filing the written statement at the earlier stage. In spite of granting sufficient time, the defendants have not utilised the said opportunity and now at the belated stage filed the present applications. Hence, prayed to reject the applications.

4. Heard the arguments. Perused the rival contention of the parties.

5. On the basis of the above facts, the following points that arise for my determination are;

1. Whether the defendants have made out sufficient ground to allow the applications?
2. What order ?

6. My answer to the above points is;

Point No.1 : In the Affirmative;
Point No.2: As per the final order,
for the following;

REASONS

7. Point No.1:- On perusal of contention urged by both parties, it appears that the plaintiff has filed this suit for the relief of mandatory injunction. The present applications are filed by the defendant No.1 and 7 respectively seeking permission to file written statement. On perusal of contention urged by both parties, it appears that the plaintiff has filed this suit in the year 2021. This application is filed by the defendant No.1 and 7 on 13.04.2023. According to defendants, due to compromise talks were going on between them and the plaintiff and further defendant No.7 was out of station on her personal work, they could not contact their counsel to instruct their counsel to prepare the written statement. Hence, there was delay in submission of the written statement. It is pertinent to note that non-filing of written statement within time is not an intentional one. If they are permitted to file written statement, no prejudice would be caused to the plaintiff. On the other hand, the objection of the plaintiff is that inspite of sufficient time, the defendants have not filed the written statement

within stipulated period. However, admittedly there is a delay in filing of written statement. It is true that the defendants have not filed written statement within stipulated period. Now the defendants have come forward to file written statement, an opportunity has to be given to them. If they are permitted to file written statement, no prejudice would be caused to the plaintiff. In fact, it will be helpful to the Court to adjudicate the matter effectively. The delay may be compensated by imposing reasonable costs. Therefore, this court is of the opinion that the application deserves to be allowed. Accordingly point No.1 is answered in the **affirmative**.

8. **Point No.2:-** For the above discussion, I proceed to pass the following;

ORDER

IA.No.III filed by the defendant No.1 Under Order VIII Rule 1A and I.A. No.IV filed by the defendant No.7 Under Order VIII Rule 1A of CPC is hereby allowed on payment of cost of Rs. 600/- each.

Defendant No.1 to 5 and 7 are permitted to file their written statement.

For

IV Addl. Civil Judge & JMFC.,
Belagavi.

