

IN THE COURT OF CIVIL JUDGE AND JMFC,
AT SANDUR

PRESENT

Sri. MD. SHAIZ CHOUTHAI,
B.A.,LL.B.(Hons.), LL.M.
Civil Judge & JMFC, Sandur.

O.S. No.175/2024

Dated this the 29th day of April 2026

Plaintiff/s : Smt. B. Nagaveni W/o B. Nagaraj,
Aged about 60 years,
R/o House No.327,
Durgamma Seda Bhavi Badavane,
Shivapura,
Kudligi Taluk, Vijayanagara District,
Now present business
address D. No.2512/G in W.No.14,
Sandur town,
Sandur Taluk, Ballari District.

(By Sri. K.M.C., Advocate)

V/s

Defendant/s: A. Niranajan S/o Late A. Shiva Prasad,
Aged about 45 years,
R/o Main Bazaar,
Sandur town,
Sandur Taluk, Ballari District.

(By Sri. G.M., Advocate)

I.A.NO.VII AND VIII

Applicant : A. Niranjana S/o Late A. Shiva Prasad,
(Defendant)

V/s

Opponents: Smt. B. Nagaveni W/o B. Nagaraj,
(Plaintiff)

**COMMON ORDERS ON I.A.NO.VII AND VIII FILED BY
DEFENDANT**

1. The defendant filed I.A. No. VII under section 151 of CPC seeking to reopen the stage for filing written statement.

2. The defendant filed I.A. No. VIII under Order VIII Rule 1 and 2 R/w Sec. 151 of C.P.C. seeking permission to file written statement at belated stage. The applications are filed on 06.01.2026 when the matter was posted for hearing on other interim applications.

3. Since the contentions taken in I.A. No. VII and VIII are similar and common objections are filed, they are taken together for common disposal.

4. It is contended that the plaintiff instituted this suit against the defendant for the relief of permanent injunction. On the previous dates of hearing, the defendant could not file written statement on the date fixed by this court and therefore, the written statement was taken as not filed. According to defendant, non-filing of the written statement is not intentional but for bonafide reasons. It is submitted that the defendant was not able to give information and instructions to his counsel to file written statement as he could not obtain necessary documents from the concerned authorities. Some of the documents were misplaced by his deceased father. The defendant obtained documents on 12.07.2025, 29.07.2025 and 02.09.2025. Further, the defendant traced misplaced documents recently on 26.12.2025 and 30.12.2025. After obtaining and tracing documents, the defendant instructed his counsel to file written statement. Therefore, he is advised by his counsel to file these applications. On these grounds he prays to allow his applications and permit him to file written statement by reopening the stage by which no

harm or hardship will be cause to the other side. If the applications are not allowed he will be put to hardship and inconvenience.

5. The plaintiff filed common objections to these applications and prays to dismiss the same as false and vexatious. The plaintiff denied the entire contents of the applications as false. According to plaintiff, the defendant has sought two reliefs under single I.A. No. VII which is not permitted as per Rule 23 of Karnataka Civil Rules of Practice. According to plaintiff, the written statement shall have to be filed within 125 days from the date of service of summons as per the amended provisions to Order 5 Rule 1(1) of CPC which came into effect from 21.02.2025. The defendant did not chose to file written statement within the prescribed time but filed these applications after the lapse of 240 days. Amongst other grounds, she prays to dismiss the applications.

6. Heard the learned counsel for the applicant and plaintiff. Perused the entire records and order-sheet.

7. The points that arise for my consideration are:-

1. Whether there are grounds to allow the applications?
2. What order?

8. My answer on the above points are as follows:-

Point No.1 : In the **AFFIRMATIVE**

Point No.2 : As per final order
for the following:-

REASONS

9. **POINT NO.1:** The present applications are moved seeking permission to file written statement by reopening the stage without adhering to the time-limit as provided in Order VIII Rule 1 of CPC. It is claimed by the applicant that he could not obtain relevant records from the concerned authorities and could not trace certain documents. In this interregnum he could not instruct his counsel to file the written statement. For these reasons, according to him, he could not file written statement in time.

10. The present suit is instituted for the relief of permanent injunction. The order sheet reveals that the summons to defendant was served on 21.04.2025, and he appeared through his counsel on 24.04.2025. But he failed to file written statement till today. The record further reveal that trial has not yet begun and the stage is posted for hearing on interim application for grant of temporary injunction.

11. In order to claim that the proviso to Order VIII Rule 1 of CPC, has to be construed as discretionary and not mandatory, it is necessary to refer to the judgment of Hon'ble Apex Court in ***Kailash v. Nanhku*** reported in **(2005) 4 SCC 480**. The Hon'ble Apex court in the above decision, upon taking into consideration the fact that in a given case the defendants may face extreme hardship in not being able to defend the suit only because he had not filed written statement within a period of 90 days, opined that the said provision was directory in nature. However, while holding so the Hon'ble Apex court in no uncertain terms stated that the defendants may be permitted to file written statement

after expiry of period of 90 days only in exceptional situation. It is apt to refer the extract of the said observations, which is herein under :

“Ordinarily, the time schedule prescribed by Order VIII, Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for asking more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order VIII, Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.”

12. Further, the Hon'ble Apex court in *R.N.Jadi & Bros. v. Subhashchandra*, reported in (2007) 6 SCC 420, the Hon'ble Justice P.K. Balasubramanyan, in his concurring judgment stated the law as under:

“14. It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knockouts. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in *Kailash v. Nanhku* [(2005) 4 SCC 480] which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigour of that provision or to mitigate genuine hardship. It was in that context that in *Kailash v. Nanhku* [(2005) 4 SCC 480] it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time-limit fixed by the Code and the power inhering in the court in terms of Section 148 of the Code, is no

authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

15. A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional cases, will the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in *Allen v. Sir Alfred McAlpine & Sons* [(1968) 2 QB 229 : (1968) 2 WLR 366 : (1968) 1 All ER 543 (CA)] that law's delays have been intolerable and

last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?”

13. Therefore, the law that stands of today is that, though the time schedule provided under Order VIII Rule 1 of CPC, is held to be directory and not mandatory, but extension of time in filing or receiving the written statement must be only in rare and exceptional circumstances, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice.

14. In the instant case, the defendant has filed bunch of documents along with the applications. Sufficient time could have spent in obtaining those documents in the absence of which no proper written statement could have been filed in time.

15. The contention of the plaintiff that as per the amendment to Civil Procedure Code, 2024 which came into effect from 21.02.2025 prescribe time limit for filing written statement

to 120 days. However, the said amendment has been stayed by Hon'ble High Court of Karnataka.

16. Nonetheless, the records reveal that the plaintiff instituted this suit for the relief of permanent injunction in respect of immovable property seeking restrain on the defendant from evicting him. The plaintiff has sought vital relief which has direct bearing on the right of the defendant to enjoy the suit property. Therefore, his defence cannot be struck off by denying an opportunity to him. Therefore, in the interest of justice and equity, this court deems it necessary to allow the application and permit defendant to place his written statement. With these observations, I answer Point No.1 in the **AFFIRMATIVE**.

17. **POINT NO.2:-** In view of the above findings and discussions, I proceed to pass the following:-

ORDER

I.A. No.VII filed under section 151 of
CPC is hereby allowed.

I.A. No.VIII filed under Order VIII Rule 1 and 2 R/W Sec.151 of CPC is hereby allowed.

The stage is reopened for filing written statement.

The written statement of defendant is taken on record.

(Dictated to the stenographer, computerized by him, corrected by me and then pronounced in the open Court, on this the 29th day of April - 2026).

(Md. Shaiz Chouthai)
Civil Judge and J.M.F.C., Sandur.