

KABK210023162016



**IN THE COURT OF ADDL. CIVIL JUDGE & J.M.F.C,
MUDHOL, AT: MUDHOL**

PRESENT:

SMT.SARASWATI HOTAKAR,

B.A., LL.M.,

Addl. Civil Judge & JMFC., Mudhol.

Dated this the 27th day of February - 2024

O.S.No.314/2016

Plaintiff:

Smt. Renuka W/o.Nagappa Goudar
& another.

- V/s -

Defendant/s:

Smt. Devakawwa W/o. Hanamanth
Kalabasappannavar & others.

I.A. No.6

Applicant/Defendant No.1:

Smt. Devakawwa W/o.Hanamanth
Kalabasappannavar.
Age: 58 years, Occ: Household work,
R/o. Lokapur & others.

- Vs -

Opponent/Plaintiff:

Smt. Renuka W/o. Nagappa Goudar.

Age: 50 years, Occ: Agriculture,
R/o. Lokapur.

====

Applicants by Sri.P.M.V., Advocate
Opponent by Sri.A.S.C, Advocate

===

ORDERS ON IA No.6 FILED U/Sec. 151 OF CPC

This is the application filed by the applicant/defendant Nos.1 to 4 U/Sec. 151 of CPC seeking permission to file the written statement by condoning the delay for the reasons stated in the affidavit.

2. In the affidavit annexed to the application, the applicant/ defendant No.1 has stated that, on the previous date she has unable to contact their advocate to file the counter claim written statement, because she is residing at Mangalore which is more than 600 Kms from Mudhol and she is doing coolie work for livelihood., Due to pandemic circumstances they are unable to come to Mudhol and file written statement in previous dates. If application is not allowed they will be put to heavy and irreparable loss. On the contrary no loss or hardship will be caused to other side. On these grounds prays to allow the application.

3. On the other hand, the plaintiff has filed objections to the above application stating that, contents of affidavit are false, baseless and misleading. The present suit is filed for the relief of partition and separate possession. Though defendant Nos. 1 & 3 appeared long back but they did not file WS as well as counter claim in time i.e. within the prescribed time from the date of service of summons as per CPC. The present application filed is not maintainable as they have filed present application only to drag the matter as well as harass the plaintiffs. On these grounds prays to dismiss the application with costs.

4. Heard both sides. Now the following points that arise for my consideration:

POINTS

1. Whether the applicant/defendant Nos.1 & 3 has made out sufficient grounds to allow I.A.No.6 as prayed for?
2. What order?

5. My findings to the above point is as under:

Point No.1 : In the Affirmative ,

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

: REASONS :

6. Point No.1:- I have already narrated the facts stated in the affidavit annexed to the application and also objections filed by the plaintiff to the said application. This is the suit filed by the plaintiffs against the defendants for the relief of partition and separate possession.

7. On perusal of the order sheet dated 29/05/2017, 07/12/2018 and 17/02/2022 the defendant Nos. 1 to 4 have put in their appearance through their counsel and prayed time to file Written Statement and objections. Hence case was adjourned on various times to file written statements of defendant Nos. 1 to 4. Now the applicants have come up with this application seeking permission to file their counter claim written statement. The counsel for plaintiff strongly objected the application and argued that defendants have not given sufficient reasons for delay caused in filing written statement, as per the provisions U/or. 8 of CPC defendants have to file written statement within 30 days, if not after permission from the court they shall file their written statement within 90 days but the defendants seeking permission to file written statement after laps of 5 years which is nothing but abuse of

process of Law and only to drag the matter they have come up with such applications.

8. Undoubtedly there is an enormous delay in filing the written statement. Moreover, the reasons assigned by the defendant No 1 in her affidavit file along with this application explaining the delay in filing the written statement are not cogent and sufficient. But in order to decide the suit on merits and to avoid the multiplicity of the proceedings it is considered just and proper to allow the application. Further more rival pleadings are necessary in order to ascertain the real dispute between the parties and to decide the case effectively and conclusively. However, on account of the delay by the defendants in filing the written statement, they should be saddled with costs. Accordingly I answer point No.1 in the affirmative.

9. Point No.2: In view of my discussions and findings on point No.1, I proceed to pass the following:

: O R D E R :

**I.A.No.6 filed by the defendant Nos.
1 to 4 U/Sec.151 of C.P.C is hereby
allowed on cost of Rs.2,500/-.**

**Accordingly W.S and Counter Claim
filed by the defendant Nos. 1 to 4 is
taken on record.**

**For Issues and orders on I.A.No 7
to 9.**

(Dictated to the stenographer directly on computer, typed by him, transcript revised, corrected and then pronounced by me in the open court this the day of **27th day of February, 2024**)

(Smt. Saraswati Hotakar.)
Addl Civil Judge & J.M.F.C., Mudhol.