

ORDER ON I.A.NO.XXVII

Defendant No.4 has filed I.A.No.27 under Sec.151 of CPC., seeking permission to file written statement by condoning the delay in the interest of justice and equity.

Defendant No.4 has sworn to an affidavit in support of I.A and contended that plaintiff has filed this suit for the relief of the declaration and mandatory injunction in respect of suit schedule property. Initially defendant No.4 was not party and after impleading him in this case he had engaged a counsel and filed Vakalath. Since he was not well versed with the proceedings he was not aware of filing written statement. His counsel has not intimated him regarding the proceedings. Recently defendant No.5 & 6 came to his house and intimated him about pendency of this case. Thereafter he enquired his previous counsel but he did not respond and later he came to know that his previous counsel was not diligent enough to prosecute the case on his behalf. Thereafter, said counsel has issued NOC and later he had engaged new counsel and instructed him to file written statement. The delay in filing written statement is not intentional and hence prays to permit him to file written statement for effective disposal of the case. If this court decline to condone the delay in filing the written statement, the defendant No.4 will be put great hardship and injustice and on the other hand if the I.A is allowed no hardship or injustice will be cause to the other side. Hence, prays to allow the application in the interest of justice and equity.

Inspite of giving sufficient opportunity, plaintiff has failed to file objection and contest this I.A.

Heard, perused the records and found that plaintiff has filed the suit for declaration and mandatory injunction against the defendant No.1 to 3. Though the suit was filed in this year 2007, the defendant No.4 was impleaded in the year 2017. On perusal of the order sheet it goes to show that the matter is still posted for cross-examination of PW.1. The counsel for the plaintiff also got retired from this case and notice was issued to the LR's of plaintiff but they have not appeared before the court and shown any interest in prosecuting the case. Considering that defendant No.4 was impleaded after 10 years of filing this suit and still matter is in the stage of plaintiffs evidence and defendant No.4 claims to be purchaser of the suit schedule property under Registered sale deed dated:29.01.2009, an opportunity shall be given to him to purforth his defense and prove his case. Apart from that neither plaintiffs nor their counsel are representing the matter. The defendant No.4 has relied upon the citation reported in 2018(3) Kar. L.J.306 in the case of Smt. S.C.Nagaveni and other Vs. T.G.Nagesh and others, In 2021(1) KCCR 343 in the case of Sri.M.P. Moosa and another Vs. Sri.S.Narayana Sa and others, In 2018(2) KCCR 1229 Smt.C.Bhagya and others Vs M/s.Poornaprajna House Building Co-operative Society Ltd., Bengaluru in which it was observed that this court has to follow the majority view and the majority view was that application can be allowed and written statement can be taken on record even after a belated stage by imposing cost in order to substantial justice between the parties. It was further observed that the power of the court to extent time for filing the written statement beyond the time schedule provided by order 8 Rule 1 of the CPC is not completely taken away. The principles laid down in the above said citations aptly applies to the case on hand.

Considering that this is a suit for declaration and mandatory injunction, it is just and proper to permit the defendant No.4 to contest the matter by filing written statement. Moreover, plaintiff has not filed any objection to this I.A and thus defendant No.4 must be given an opportunity to prove his right over the suit schedule property. Thus, the delay caused by the defendant No.4 has to be compensated by imposing cost. For the aforesaid reasons. I proceed to pass the following;

: ORDER :

I.A.No.XXVII filed by the Defendant No.4 under Sec.151 of CPC., is hereby allowed on cost of Rs.2000/-.

The delay in filing written statement is hereby condoned.

The written statement filed by the defendant No.4 is taken on record.

Posted for Addl Issues-23.02.2026.

(SHILPA.H.A)

**Senior Civil Judge & JMFC.,
Doddaballapura.**