

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.,**  
**NELAMANGALA**

**DATED THIS THE 10<sup>th</sup> DAY OF JULY 2019**

**PRESENT:**    **Sri Arun S Gudigenavar**  
                  **B.A., LL.B (Hon's) LL.M.,**  
                  **Prl. Civil Judge & JMFC.,**  
                  **Nelamangala.**

**O.S.No.181/2015**

**Plaintiff:**            Rangaswamay,  
                             S/o late Najnappa,  
                             Aged about 38 years,  
                             R/at Totadaguddadahalli Village,  
                             Dasnapura Hobli,  
                             Bengaluru North Taluk.

(By Sri G.Nataraj., Advocate)

**-V/s-**

**Defendants:** 1. Govindayya,  
                             S/o late Thimmappa,  
                             Aged about 66 years,

2. Smt Guramma,  
                             W/o Govindayya,  
                             Aged about 58 years,

3. Smt Latha,  
                             D/o Govindayya,  
                             Aged about 38 years,

All are R/at Arasalasandra Village,  
Kasaba Hobli, Nelamangala Taluk,  
Bengaluru Rural District.

(D1 By Sri N.L.Suresh., Advocate)  
(D2 and D3 Exparte)

**PARTIES IN IA.NO.5**

**Applicant/Defendant No.1:** Govindaiah and others.

**V/s**

**Opponent/plaintiff:** Rangaswamy.

**ORDER ON IA.NO.5**

The defendant No.1 has filed this application U/s 151 of Civil Procedure Code seeking permission of this court to file his written statement by condoning the delay.

2. The defendant No.1 in his affidavit annexed to the application has stated that the plaintiff filed this suit for the relief of specific performance of contract against him and other defendants. Further, he has stated that after appearing before this court through his counsel he could not file written statement as he was suffering from ill-health issues. Therefore, he could not meet his counsel and give instructions to him to file his written statement. Now his health condition is good and he has prepared his written statement and also procured documents. Further, he has stated that if the delay is not condoned in filing his

written statement he would be put to great hardship and inconvenience. Hence, he has prayed to allow his application.

3. On the other hand the plaintiff has filed common objection contending that the application is not maintainable either in law or on facts. Further, he has contended that the suit summons has been served on the defendant No.1 and in pursuance of the same the defendant No.1 has appeared before this court on 25.11.2015. From that day till 29.11.2018 the defendant No.1 has not filed his written statement. Further, he has contended that in view of Order 8 Rule 1 of Civil Procedure Code the defendant No.1 cannot be permitted to file his written statement. Further, he has contended that there is a delay of 1078 days. The defendant No.1 has not explained each day delay in his affidavit. Further, he has contended that the defendant No.1 after dragging the proceedings for period of 2 years has come up with the present application only with an intention to drag on the proceedings. Hence, he has prayed to dismiss the applications.

4. Based on the rival contentions the points that would arise for my consideration are as follows:

1. Whether the defendant No.1 has made out grounds to condone the delay 1159 days in filing his written statement?
  2. What order?
5. Heard the counsel for the defendant No.1. The counsel for the plaintiff has not addressed his arguments on this application. Perused the materials placed on record.
6. My findings to the above points are as follows:
- |              |                                           |
|--------------|-------------------------------------------|
| Point No.1 : | In the Negative                           |
| Point No.2 : | As per the final order for the following; |

### **REASONS**

7. **Point No.1:** Admittedly the present suit is for the relief of specific performance of contract with respect to suit schedule property against the defendants. On perusal of order sheet it is clear that the notice of the suit has been served on defendant No.1 to 3 on 16.10.2015. The defendant No.2 and 3 have not appeared before this court. Hence, they have been placed exparte. The defendant No.1 has appeared before this court on 25.11.2015 through his counsel. From that day till 29.11.2018 the defendant No.1 has not chosen to file his written statement. On 04.01.2019 when the case has been posted for arguments, the defendant No.1 has come

up with the present application seeking to condone the delay in filing his written statement. The defendant No.1 in his affidavit has stated that due to his ill-health he could not instruct his counsel to prepare his written statement. Therefore, the delay has been caused in filing his written statement. As already stated supra, the notice of this suit has been served on defendant No.1 on 16.10.2015. Therefore, the defendant No.1 ought to have filed his written statement within total period of 90 days from the date of service of notice i.e., within 06.01.2016. But the defendant No.1 has failed to do so.

8. At this juncture, it is relevant to refer the decision of **Hon'ble Supreme Court of India** in the case of **M/S SCG CONTRACTS INDIA PVT LTD., V/S K.S.CHAMANKAR INFRASTRUCTURE PVT LTD AND OTHERS**, wherein, it has been observed as under:

**This was re-emphasized by re-inserting yet another proviso in Order VIII Rule 10 CPC, which reads as under:**

**“Procedure when party fails to present written statement called for by court. Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on**

**pronouncement of such judgment a decree shall be drawn up.**

**Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.**

**A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.**

9. In view of the above ratio laid down by the Hon'ble Supreme Court of India it is clear that the defendant cannot be permitted to file his written statement beyond 120 days from the date of service of summons on him. Further, it is clear that after the prescribed period the defendant forfeits his rights to file the written statement. In the present case there is a delay 1159 days. But the defendant No.1 has not

explained each day delay in filing his written statement. Simply, he has stated that due to his ill-health he could not contact his counsel to file his written statement. However, he has not produced any documents to show that he was suffering from ill-health. Therefore, the reasons furnished by the defendant No.1 are not acceptable. Accordingly, I answer Point No.1 in the Negative.

10. **Point No.2:** For the aforesaid reasons, I proceed to pass the following:

**ORDER**

IA.No.5 filed by the defendant  
No.1 U/s 151 of Civil Procedure  
Code is hereby rejected.

(Dictated to Stenographer directly over computer typed by him, corrected, signed and then pronounced by me in the open court this the 10<sup>th</sup> day of July 2019)

Sd/-  
Prl. Civil Judge & JMFC.,  
Nelamangala.