

ORDERS ON IA NO. VIII

This application is filed at the stage of cross examination of Pw.1. The defendant has filed the present application under section 151 of CPC, seeking permission to file his written statement in the present suit.

2. In support of the present application, the defendant has sworn to an affidavit wherein stated that, after filing of the above suit, Panchayath was held wherein the plaintiff has agreed to withdraw the above suit. As such he had thought that the plaintiff had withdrawn the suit. Whereas, he got knowledge of the present suit posted for evidence only few days back and due to the said mistake, his written statement could not be filed within time. On these averments, the defendant has sought for allowing the application.

3. On the other hand, the plaintiff has filed his objections resisting the present application contending that the defendant has innovated a new story in support his application and his right of filing written statement has ben forfeited. The present application is filed at the belated stage and no good and valid grounds are made out by the defendant. The plaintiff has further stated that even on sufficient opportunities, the defendant has failed to file his written statement therefore he is estopped from seeking opportunity to file his written statement. On these grounds, the plaintiff has sought for rejection of the application.

4. Heard both side and perused the materials available on record. Now, the points that arise for consideration is as follows:

1) Whether the defendant has made out sufficient grounds to permit him to file written statement?

2) What Order?

5. The answers of this Court on the above points are as follows:

Point No.1: **In Affirmative.**

Point No.2: As per final order

for the following:

REASONS

6. **Point No.1:** The plaintiff has filed the present suit for declaration of easementary right and consequential injunctions with respect to the alleged road claimed to be existing over the suit 'B' schedule property. Though the defendant had entered appearance through his learned counsel, he has not filed his written statement in the present suit. During the later stages of the suit, application filed seeking amendment of plaint came to be allowed and consequently, the defendant had given opportunity to file his additional written statement. On perusal of the order sheet and the entire records, it could be seen that the defendant has not filed his original written statement. Now, by way of the present application the defendant has sought for permission to file his

written statement when the matter was posted for cross examination of Pw.1.

7. The reasons stated by the defendant for the delayed filing of written statement is that, subsequent to the filing of suit, Panchayath was held wherein the plaintiff had agreed to withdraw the suit and the defendant had thought that the plaintiff had withdrawn the present suit. But, the suit was posted for evidence and the knowledge of the same came to his knowledge recently. This aspect is denied by the plaintiff by contending that the grounds urged by the defendant is innovated by him only in support of the present application.

8. It is no doubt that the defendant had to file his written statement within 30 days from receipt of suit summons and such time limit can be extended for 90 days but shall not be later than that. The question is, does the right of filing the written statement will be extinguished if the defendant has failed to file his written statement within such 90 days. Therefore, it is germane here to refer the decision of Hon'ble Apex Court in the case of **Salem Advocate Bar association Vs. Union of India** reported in **AIR 2005 SC 3353** wherein it has been held as under:

“In construing the provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order VIII, the court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order VIII

Rule 1. There is no restriction in Order VIII Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to 'make such order in relation to the suit as it thinks fit'. Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1."

The above decision is retreated by the Hon'ble Apex Court in the recent decision in the case of **Deshraj Vs. Balakishan** in **Civil Appeal No. 433/2020 D.D. 20.01.2020**.

9. On careful reading of the above decisions referred supra, it is clear that the time limit prescribed under order VIII rule I is a directory and not mandatory but the nature and circumstances of the case needs to be considered seriously for the purpose of extending the time for filing of written statement after the lapse of 90 days. Herein the present case the suit being filed for declaratory relief with respect easementray right over a water course and also for consequential injunction. The say of defendant over the issue would be relevant for reasoned and final disposal of

the matter in controversy. If the defendant is not permitted to file the written statement, then it would lead for multiplicity of proceedings. Whereas, the hardship caused to the plaintiff by such delayed filing of written statement shall not be kept at dark. Therefore, this Court considers to impose cost on the defendant so as to compensate the plaintiff. In view of the above discussion, Point No.1 is answered in **Affirmative**.

10. Point No.2: In view of the reasons recorded on point No.1, this Court deems it fit to allow the present application on cost. Hence, the following:

ORDER

I.A. No.8 filed by the defendant under
Section 151 of Code of Civil Procedure, is
hereby allowed on cost of Rs.1,500/-.

Written statement filed by the
defendant is taken on record.

For Issues by: 28.06.2023.

Sd/-

**ADDL. CIVIL JUDGE & JMFC.,
MUDIGERE**