

ORDERS ON IA NO.14

This application is filed by the learned AGP at the stage of hearing on IA No.2. The present application is filed under Order 27 rule 7 r/w Section 151 of CPC seeking permission to file the written statement of defendant No.1, belatedly, on the ground that since the documents which were required to draft written statement could not be collected at the earliest, they could not file the written statement within time.

2. The plaintiff has objected the present application on the ground of delay, bar under CPC (Karnataka Amendment) Act 2024 and contended that the reasons assigned in support of application is bald.

3. Heard both side and also perused the entire materials on record. The following points do arise for consideration:

1. Whether the defendant No.1 has made out sufficient grounds to permit it to file the written statement?

2. What Order?

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

Point: **In Affirmative.**

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

REASONS

5. Point No.1: This is a suit instituted on 21.01.2025, seeking for a decree of declaration and

consequential injunction. Though order 8 Rule 1 of the Code of Civil Procedure, is amended, as per the Karnataka Act, 40/2025 (with effect from 05.06.2025) whereby it is directed that the written statements filed beyond 120 days from the date of service of summons shall not be taken on record. But, the said amendment which is in the nature of taking away the substantive right of the litigant, is given effect from 05.06.2025 while the above suit is instituted on 21.01.2025, by the time, the Amendment Act was not in effect.

6. Herein the case, the reasons stated by the defendant No.1 for the delayed filing of written statement is that since the documents required to draft the written statement was not obtained at the earliest, it could not file the written statement within time. 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 reiterated by the Hon’ble Apex Court in the case of **Deshraj Vs. Balakishan** in **Civil Appeal No. 433/2020 D.D. 20.01.2020.**

7. On careful reading of the decisions referred supra, it is clear that the time limit prescribed under order VIII rule I is 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 one for declaration and consequential injunction, the say of defendant No.1 over the issue would be relevant for reasoned and final disposal of the matter in controversy. If the defendant No.1 is not permitted to file the written statement, then it would lead for multiplicity of proceedings. In view of the above discussion, Point is answered in **Affirmative.**

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

ORDER

**I.A.No.14 filed by defendant No.1
under Order 27 rule 7 r/w Section 151**

**of Code of Civil Procedure, is hereby
allowed.**

**Written statement filed by
defendant No.1 is taken on record.**

**For hearing on IA No.2 by:
05.02.2026.**

Sd/-

(Vishwanath.A)
Prl. Civil Judge & JMFC,
Mudigere.