

ORDERS ON IA NO. VI

This application is filed at the stage of Plaintiff Evidence. The defendants have filed the present application under Order 27 Rule 7 of CPC, seeking permission to file the written statement in the present suit.

2. In support of the present application, learned AGP has filed memorandum of facts wherein submitted that since there was a delay in obtaining approval of written statement from the concerned authority, the written statement could be filed in time. On these averments, learned AGP has sought for allowing the application.

3. On the other hand, learned counsel for plaintiff has filed his statement of objections resisting the present application contending that the present application is not supported with an affidavit as mandated under Rule 18(2) of Karnataka Civil Rules of Practice. Order 5 Rule 1(1) of CPC mandates that the written statement should be filed within 30 days from the date of receipt of suit summons, thus the defendants have lost their right of filing written statement. Though sufficient opportunities were provided for the defendants, they have not file the written statement. On these grounds, the learned counsel for 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 are as follows:

- 1) Whether the defendants have made out sufficient grounds to permit them 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 permanent injunction with respect to the suit property. Though the defendants had entered appearance through learned AGP, they had not filed their written statement in the present suit. It is now at the stage of plaintiff evidence, the defendants by way of the present application is seeking for permission to file written statement.

7. The reasons stated by the defendants for the delayed filing of written statement is that, since there was a delay in getting approval of the written statement from the higher authorities, the written statement could not be filed within time. On the other hand, the plaintiff has specifically

contented that the present application is not maintainable for being not supported with an affidavit. Law mandates that the written statement should be filed within 30 days from the date of receipt of summons and in default, the right of filing written statement will be lost.

8. It is no doubt that the defendants had to file the 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 defendants have failed to file 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 reiterated 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 permanent injunction against the state, the say of defendants over the issue would be relevant for reasoned and final disposal of the matter in controversy. If the defendants are not permitted to file the written statement, then it would lead for multiplicity of proceedings. Further, it is not the case under Rule 18 of

Karnataka Civil Rules of Practice that all the interlocutory applications shall have to be accompanied to be with an affidavit, but the said rule prescribed several applications for which affidavit are mandatory. The present application is not of a kind as mandated under said rule therefore the objection raised by the plaintiff that the present application is not maintainable for want of an affidavit, cannot be accepted. Though order 27 Rule 7 of CPC does not provide for a procedure to permit the state authorities to file the delayed written statement, but it is now a settled position of law that quoting wrong provision is not fatal to the prayer sought in the application. 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.VI filed by the defendants under Order 27 rule 7 of Code of Civil Procedure, is hereby allowed.

Written statement filed by the defendant No.3 is taken on record. Defendant No.1 and 2 are permitted to adopt the written statement of defendant No.3.

For hearing on I.A.No.II by:
31.10.2023.

Sd/-

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