

ORDERS ON IA NO. III

This application is filed at the stage of plaintiff evidence. The defendant No.3 has filed the present application under Section 151 of CPC, seeking permission to file his written statement in the present suit.

2. It is contended by the defendant No.3 that, since he could not obtain necessary documents, he could not meet his Advocate to instruct him to file the written statement in time as such there is a delay. If the present application is rejected, he will be put to great hardship. On these averments, the defendant No.3 has sought for allowing the application.

3. On the other hand, the plaintiff has filed his statement of objections resisting the present application contending that the defendant No.3 has filed the present application only to drag the proceedings and to harass the plaintiff. The reasons stated in the application are false and untrue there is no sufficient reason to condone the delay in filing the written statement as the same ought to have been filed within 90 days from the date of receipt of suit summons. 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 are as follows:

- 1) Whether the defendant No.3 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 permanent injunction with respect to the suit schedule properties. Though sufficient opportunities were granted to the defendants to file the written statement, they have not filed their written statement and as such vide order dtd: 07.12.2023, the written statement and objections to IA No.I is taken as nil and the matter was posted for plaintiff evidence on 19.12.2023. It is on that day the defendant No.3 has filed present application seeking permission to file written statement along with adoption memo.

7. The reasons stated by the defendant No.3 for the delayed filing of written statement is that since he could not obtain necessary documents and meet his Advocate to file the written statement within time, his written statement could not be filed in time. This aspect is denied by the plaintiff by contending that the grounds urged by the defendant No.3 is false and untrue.

8. It is no doubt that the defendants ought to have filed 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 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 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 filed against the defendants seeking for permanent injunction with respect to the suit schedule properties. The say of defendants over the issue would be relevant for reasoned and final disposal of the matter in controversy. If the defendant No.3 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 cannot be kept at dark. Therefore, this Court considers to impose cost on the defendant No.3 so as to compensate the plaintiff and permit him to file his written statement. In view of the above discussions, 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.III filed by the defendant No.3 under Section 151 of Code of Civil Procedure, is hereby allowed on cost of Rs.200/-.

Written statement filed by the defendant No.3 is taken on record. Adoption memo filed by defendant No.1 and 2 adopting the written statement of defendant No.3 and another adoption memo adopting the written statement and objections to IA No.I, are also taken on record.

O.S.76/2023

For Issues by: 23.01.2024.

Sd/-

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