

## **ORDERS ON IA NO.6**

This application is filed by the learned AGP at the stage of cross examination of PW1. The present application is filed under Section 151 of CPC seeking permission to file written statement of defendants.

**2.** In support of the present application, it is stated that the documents which were necessary to file the written statement and also the permission from the superior authority could not be obtained within time and as such the written statement could not be filed within time. If the above application is not allowed, then the defendants will be put to hardship and injustice. On these averments, the defendant No.5 has sought for allowing the application.

**3.** On the other hand, learned counsel for plaintiff has filed the statement of objections resisting the present application contending that each day delay is not explained and no grounds are made out in support of the present application. On these grounds, the learned counsel for plaintiff has sought for rejection of the application.

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

- 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 bare injunction with respect to the suit properties alleging interference by the defendants. The defendants by way of the present application are seeking for permission to file written statement. The reasons stated by the defendants for the delayed filing of written statement is that, the documents which were necessary to file the written statement and also the permission from the superior authority could not be obtained within time. On the other hand, the plaintiff has specifically contented that the defendants have not explained each day delay. Explaining each day delay is not necessary. 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 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 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 filed for injunction with respect to the suit properties wherein

interference is alleged against the defendants. Thus, 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. In view of the above discussion, Point No.1 is answered in **Affirmative**.

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

**ORDER**

I.A. No.VI filed by the defendants under Section 151 of Code of Civil Procedure, is hereby allowed.

Written statement filed by the defendant No.4 is taken on record. Defendant No.1 to 3 are permitted to adopt the written statement of Defendant No.4.

For framing of Issues by:  
04.03.2025.

Sd/-

**(Vishwanath.A)**  
C/c Addl. Civil Judge & JMFC  
Mudigere.