

COMMON ORDER ON I.A.NO.X & XI FILED U/S.151 CPC.

The defendant No.2 to 5 have filed IA No. X U/Sec. 151 of CPC and defendant No.1 filed I.A.No.XI U/Sec. 151 of CPC to permit the them to file their written statement by condoning the delay. Along with the I.A.No.X defendant No.2 to 5 filed memo of fact and in I.A.No.XI defendant No.1 filed affidavit. The defendant No.2 to 5 stated that due to unavoidable circumstance and they were in U.K for marriage ceremony of the son of 2nd defendant they could not able to file their written statement. The reason for not filing written statement within time is bonafide one and not intentional. If the application is not allowed then their right to contest the case will be taken away. Hence defendant No.2 to 5 prays to allow the application. The defendant No.1 in the affidavit annexed to I.A.No.XI stated that he could not file the written statement in time due to the ill-health of his wife. Hence he could not contact his counsel in time. Hence delay has been

caused in filing the written statement. Hence defendant No.1 prays to allow the application.

2. On the other hand plaintiff has filed objection to I.A.No.X and XI by denying all the averments made in the memo of facts and affidavit annexed to the application. In the objection the plaintiff stated that, the application is not maintainable either in law or on facts. The application filed by defendants only to drag on the proceedings and only to harass the plaintiff. Further plaintiff stated that the reason assigned for the delay in filing the written statement are all false and untrue. There is no sufficient grounds to condone the delay as per the law within 90 days written statement would have been filed there is negligence on the part of defendants. Hence, the plaintiff prayed to dismiss the application.

3. Heard the arguments by both side.

4. The points that arise for consideration of this court are as follows:-

1. ***Whether defendant No.1 to 5 have made out sufficient grounds to***

permit them to file written statement?

2. *What order?*

5. My findings on the above points are as follows:

Point No. 1 : In the Affirmative

Point No. 2 : As for the following:

R E A S O N S

6. **POINT NO. 1:-** On perusal of the record it reveals that plaintiff has filed the suit on 28/03/2024 for declaration, partition and permanent injunction. By service of summons defendants appeared through their counsel and filed vakalath and sought time for filing written statement. Thereafter, the defendant has taken several adjournment for filling written statement. In spite of giving sufficient opportunities the defendant has not filed their written statement within the statutory period. Hence the prayer of the counsel for defendants for filing written statement has been rejected and written statement of the defendant No.1 to 5 taken as nil.

7. In the application defendant No.1 contended that due to the unavoidable circumstance they could not able to file their written statement within time. They further stated that they were in U.K for the marriage ceremony of the son of 2nd defendant. The defendant No.1 contended that due to the ill-health of his wife he unable to file written statement within time. Hence, delay has be caused in filing the written statement. It is cardinal principles of law that a party should be given a fair opportunity to defend the suit. In the interest of natural justice opportunity should be given to defendant to contest the case. On the contrary, if he is not permitted to file written statement and contest the suit, he will be suffered. The order 8 rule 1 of CPC is directory but not mandatory. In this regard this Court relied on the decision of Hon'ble High Court of Karnataka in **2005 (6) SCC 344 Salem Advocate Bar Association V/s Union of India** and **2009 (3) SCC 513 between Mohammed Yusaf V/s Faiz Mohammed** wherein it is clearly held that court can extend time for filing written statement beyond 90 days to avoid

miscarriage of justice and it is further held that order 8 rule 1 of CPC is directory but not mandatory. In view of the ratio laid down in above decisions, it is necessary to permit the defendants to file their written statement to avoid the multiplicity of proceedings. At the same time, the court cannot ignore the delay that is caused on the part of defendants. But the same could be condoned by directing the defendants to pay compensatory cost to the plaintiff for delay in filing written statement. In view of my discussion supra, I proceed to pass the following:

O R D E R

The I.A.No.X filed by the defendant No.2 to 5 and I.A.No.XI filed by defendant No.1 U/Section 151 CPC is hereby allowed on cost of Rs.200/- each.

The written statement filed by defendant No.1 to 5 taken on record.

Case posted for compliance of Sec. 89 of CPC, case referred to mediation. Office is directed to send the record to mediation. Call on 09.06.2025.

O.S.12/2024

**(JAYAPRAKASH V.)
SENIOR CIVIL JUDGE AND JMFC.
MUDIGERE.**