

ORDER ON I.A. NO. VI FILED U/S. 151 CPC

The defendant No.1 has filed IA No. VI, U/Sec. 151 of CPC to permit the defendant No.1 to file his written statement by condoning the delay. Along with the application the defendant has filed memo

of facts by stating that he could not file his written statement in the suit because of reason that he could not get required documents which are necessary to formulate his defence and very recently he could get the said documents. The reason for delay in filing written statement is bonafide and not intentional one. The defendant No.1 has not permitted to file his written statement by condoning delay, he will be put to untold hardship, inconvenience and injustice. On the other hand if the delay is condoned and the defendant No.1 permitted to file his written statement the plaintiffs are not put to inconvenience. Hence, the defendant No.1 prays to allow the application.

2. On the other hand the plaintiff has filed objection to IA No. VI by denying all the averments made in the memo of facts 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 the defendant No.1 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 file there is negligence on the part of the defendant No.1. 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 has made out sufficient grounds to permit him 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:

REASONS

6. **POINT NO. 1:-** On perusal of the record it reveals that plaintiff has filed the suit on 16/03/2022 for declaration, partition and separate possession

and permanent injunction. The suit summons in the present case served to defendant No.2 on 2/7/2022. On 15/7/2022 defendant No.1 appeared through his 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 his written statement within the statutory period. Hence on 29/10/2022 the prayer of the counsel for defendant No.1 for filing written statement has been rejected and written statement of the defendant No.1 taken as nil.

7. In the application defendant No.1 contended that he could not get required documents which are necessary to formulate his defense and recently he has obtained documents. Hence, delay has be caused in filing the written statement. It is cardinal principles of law and natural justice that a party should be given a fair opportunity to defend their suit. 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 defendant to file his 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 defendant. 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:

ORDER

**The I.A. NO. VI filed by the
applicant/ defendant No.1**

U/Section 151 CPC is hereby allowed on cost of Rs.200/-.

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

Case posted for compliance of Sec. 89 of CPC, case posted for mediation. Office is directed to send the record for mediation. call on 09-03-2023.

9/2

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