

**ORDERS ON I.A.NO.IV FILED BY THE
DEFENDANTS U/O VIII RULE 1A(3) OF CPC**

I.A.No.IV filed by defendant U/o VIII rule 1A(3) of CPC to permit the defendant to produce the documents by condoning the delay and to permit.

2. On the other hand, the plaintiff filed objection to IA No.IV and prays to dismiss the application.

3. Heard both side and perused the materials on record.

4. The following points arises for my consideration.

1) Whether the defendants have made out grounds to allow IA No.IV?

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: IA No.IV filed by defendant to grant permission to produce the documents by condoning the delay. In the memo of facts

annexed to the application defendant stated that, in the last date of hearing defendant was not able to produce the documents. In case the court does not allow the application defendant will be put to hardship, loss and inconvenience which cannot be compensated in terms of money. On the other hand no prejudice will be caused to the plaintiff if the application is allowed. Hence, the defendants prayed to allow the application.

7. On the other hand, the plaintiff filed objection to the IA No.IV. In the objection plaintiff contended that the application filed by defendant is not maintainable either in law or on facts. The application filed by the defendant is false, frivolous and vexatious. The application filed by the defendant is to drag on the proceedings. The present application filed by the defendant is highly belated. The documents sought to be produced are got up documents and not genuine. The documents are irrelevant and inadmissible in evidence. Hence the plaintiff prays to dismiss the application.

8. On perusal of the records it reveals that, plaintiff has filed the suit for declaration that

the plaintiff is owner of 'A' schedule property and possession of 'B' schedule property from the defendant. When the matter is posted for further chief of DW1, the present application is filed for production of documents by the defendant. It is the principle that adequate opportunity should be given to the parties to prove their case in the trial court itself. ***The Hon'ble Supreme Court in Levaku Pedda Reddamma & Ors. V/s Gottumukkala Venkata Subbamma & Anr.*** In Civil appeal No. 4096/2022, dated 17/05/2022 held as follows:

“The defendant Nos.2 to 5 are in appeal aggrieved against the order passed by the High Court affirming the order passed by the trial Court refusing to permit the appellant to produce additional documents in terms of Order VIII Rule 1 of the Code of Civil Procedure, 1908.

We find that the trial Court as well as the High Court have gravely erred in law in not permitting the defendants to produce documents, the relevance of which can be examined by the trial Court on the basis of the evidence to be led, but to Signature Not Verified Digitally signed by SWETA BALODI Date: 2022.05.21 deprive a party

to the suit not to file documents even if there 10:38:23 IST Reason: is some delay will lead to denial of justice. It is well settled that rules of procedure are hand-maid of justice and, therefore, even if there is some delay, the trial Court should have imposed some costs rather than to decline the production of the documents itself.

Consequently, the appeal is allowed. The orders passed by the trial Court and the High Court are set aside. The appellants – defendant Nos.2 to 5 are permitted to file the documents and to prove the same in accordance with law.”

9. The principle laid down in the above judgment is aptly applicable to the case on hand. If the IA No.IV is allowed no hardship will be caused to the plaintiff. The plaintiff has every right to cross-examine the witness on the said documents produced by defendant. Therefore, to avoid multiplicity of proceedings I inclined to allow the application filed by defendant. In view of my above discussion I answer point No.1 in the Affirmative.

10. **Point No. 2:** In view of my findings on point No.1 I proceed to pass the following:

ORDER

IA No.IV filed by defendant U/o
VIII rule 1A(3) of CPC is hereby
allowed on costs of Rs.200/-.

The document annexed to the IA
No.IV is taken on record.

Case posted for further chief of
DW1. Call on 29.02.2024.

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