

### **COMMON ORDERS ON IA NO.3 AND 4**

The learned counsel for the defendant No.1, 3, 4, 7, 9 and 11 has filed IA No.3 U/order IX Rule 7 R/w Section 151 of CPC., seeking set aside the ex-parte order dated: 18.07.2024 and IA No.4 under order VIII Rule 10 R/w Section 151 of CPC., seeking set aside the order dated: 18.07.2024 as W.S. not filed by the defendant No.1, 3, 4, 7, 9 and 11 and permit to file their written statement and contest the case.

2. In support of these applications the defendant No.1 has filed affidavits. In his affidavits he has stated that due to his old age not able to contact his counsel, the defendant No.3, 4, and 7 residing at different places and recently contacted with them and discussed to file their written statement. Further non appearance of themselves before this court was neither willful nor intentional one but due to the above stated bonofide reasons. Further if these applications are allowed, no loss or hardship caused to the other side. If these applications are not allowed they will be put to irreparable loss and hardship. Hence, he prays to allow the applications.

3. On the other hand the learned counsel for the plaintiff has filed a common objections. In the objections he stated that applications are not maintainable in law and facts and liable to be dismissed in limine. The IA No.4 filed after laps of 4 months not tenable under law. Hence, he prays to dismiss the applications with heavy costs.

4. Heard the argument and perused the material placed on records.

5. The points arise for my consideration is as follows:

1. Whether the defendant No.1, 3, 4, 7, 9 and 11 have made out a sufficient ground to allow the IA No.3 and 4?
2. What order?

6. My findings on the above points are as follows;

Point No.1: In the Affirmative.

Point No.2: As per final order, for the following;

**:REASONS:**

7. **POINT NO.1:** Admittedly this is a suit filed by the plaintiff against the defendants for the relief of partition and separate possession. Now the case is posted for defendant evidence, in the meantime the defendant No.1, 3, 4, 7, 9 and 11 have come with these applications seeking setting aside the exparte

order passed against defendant No.1, 3, and 7 and permit the defendant No.1, 3, 4, 7, 9 and 11 to file written statement and also filed written statement of defendant No.11 and adopting memo of the defendant No.1, 3, 4, 7 and 9.

8. I have gone through the applications and other materials on records. The said applications are allowed and no harm and prejudice would be caused to the plaintiff. If the applications are not allowed definitely the defendant No.1, 3, 4, 7, 9 and 11 will be put to great hardship and injustice. Even the Apex court in various judgments has expressed its view that to minimize the litigation and avoid multiplicity of proceedings and it should be allowed and permit the parties appeared and contest the suit. Therefore in order to minimize the litigation between the parties and to meet the ends of justice and considering all the aspects of the matter, this court is of the view that the defendant No.1, 3, 4, 7, 9 and 11 should be allowed to contest the suit. However as the defendant No.1, 3, 4, 7, 9 and 11 are not diligent enough while putting forward their pleadings before the court whatever inconvenience caused to the plaintiff because of the delay in filing of the applications need to be compensated by imposing costs.

Accordingly, I answer Point No.1 in the Affirmative.

**9.POINT NO.2:** In view of the above point discussed, I proceed to pass the following;

**ORDER**

I.A.No.3 and 4 filed by the counsel for the defendant No.1, 3, 4, 7, 9 and 11 under order IX Rule 7 R/w Sec. 151 of CPC., and Order VIII Rule 10 R/w Sec. 151 of CPC is hereby allowed on costs of Rs.2,000/- together and thereby exparte order passed against the defendant No.1, 3, 4 and 7 is set aside and they are permitted to proceed the matter. Further the defendant No.1, 3, 4, 7, 9 and 11 is permitted to file written statement and written statement filed by the defendant No.11 and adopting the memo of the defendant No.1, 3, 4, 7, and 9 is taken on record. For framing of addition issues if any. Call On:13.03.2026.

**Sd/-**

**Sr. Civil Judge & J.M.F.C  
Channagiri**