

## **ORDER ON IA NO.5**

The defendant no.5 has filed an application u/s 151 of CPC seeking permission to file his written statement for condone the delay in the interest of justice and equity.

2. In support of this application the defendant no.5 has swearing his affidavit.

3. Per contra the plaintiffs have filed their objections.

4. Having heard on both sides.

5. The following point will arises for my consideration.

*Whether the application filed by the defendant no.5 u/s 151 of CPC is deserves to be allowed?*

6. My answer to the above point is in the Affirmative for following:

### **REASONS**

7. **Point no.1:** The plaintiffs have filed this suit against the defendants for the relief of permanent injunction restraining them not to cause any obstruction in peaceful possession and enjoyment of the suit schedule property. Suit summons were served to defendants, the defendant no.5 has not filed his written statement within prescribed period, hence written statement of defendant no.5 is taken as not

filed. Meanwhile the defendant no.5 filed this application along with his written statement submitted that due to his agricultural work who has not approach to his counsel to prepare written statement and further submitted that he had got valid grounds to make out his defence. If he is not permitted to file his written statement he will put untold hardship and inconvenience. Hence the defendant no.5 prays that to allow the application.

8. Per contra plaintiffs have objected this application contended that already issues have been framed and evidence of plaintiffs is begun and now the case is posted for cross examination of PW.1 and PW.2. Further the plaintiffs have contended that after the lapse of 1 ½ year the defendant no.5 filed this belated application seeking permission to file his written statement is not maintainable. Further the defendant no.5 contended that if the application is allowed plaintiffs are will put untold hardship. Hence the plaintiffs have prays that to reject the application.

9. In view of the application and objections and also observing the arguments advanced by the either sides no doubt from the date of service of summons within 30 days defendant ought to have filed his written statement and

thereafter when leave of court extend time for filing the written statement and even 60 days defendants have filed their written statement. In the instant case already an opportunity being provided to defendant no.5 to file his written statement. The defendant no.5 swearing in his affidavit submitted that due to his agricultural work he could not approach to his counsel to prepare written statement on his behalf. Further submitted that the delay is not intentional one and it is bona fide one. In view of these submissions it appears that even though the case is posted for cross of PW.1 and PW.2. The defendant no.5 is permitted to file his written statement imposing suitable cost no prejudice will caused to the other side. The provision u/o 8 rule 1 is not a mandatory it is to be considered as a directory, as such the defendant no.5 is permitted to file his written statement by imposing suitable cost no hardship will cause to the other side. Hence the objections raised by the plaintiffs is not justifiable. Hence for the above reasons the above point is answered in the Affirmative and I proceed to pass the following:

### **ORDER**

IA.5 is filed by the defendant no.5 u/s 151 of CPC is hereby allowed awarding cost of Rs.1,000/- and written statement of defendant no.5 is taken as filed.

Principal Civil Judge and JMFC.,  
Honnali.