

**IN THE COURT OF PRL. CIVIL JUDGE &  
J.M.F.C. AT BELTHANGADY.**

Present:-

Sri.Sandesha.K.,MA.LLB

(Prl. Civil Judge & J.M.F.C., Belthangady)

**Dated: 7<sup>th</sup> Day of August, 2024**

**ORIGINAL SUIT NO. 225/2023**

**Plaintiff:** Veerendra Kumar  
S/o Jagathpala Indra,  
Aged about 63 years,  
R/at Muddady House,  
Bajire village,  
Belthangady Taluk. D.K

**(By: Sri.B.K.D.R., Adv.)**

-:V/S:-

**Defendants:** 1. Vimala Kumari  
W/o Jagathpala Indra,  
Aged about 87 years.  
R/at Suvidha,  
Nagarakatte, Moodabidri Taluk.  
and others.

**(By: Sri.A.N, Adv.for D1,3,6 to 8)**

**(By: Sri.V.K, Adv.for D9 to 11)**

**(By: Sri.N.B.K., Adv.for D2,4&5)**

**(By: Sri.A.K.U., Adv.for D12)**

|    |                                                                    |                                                                   |
|----|--------------------------------------------------------------------|-------------------------------------------------------------------|
| 1. | Provision under which application filed.                           | Under section 151 of CPC                                          |
| 2. | Relief sought                                                      | Pray for received the written statement after condoning the delay |
| 3. | The date on which application filed.                               | 19.04.2024                                                        |
| 4. | Number of application                                              | IA No.IV                                                          |
| 5. | The date of which the objection filed by the respondent /plaintiff | 27.06.2024                                                        |
| 6. | The date on which the order were passed on the said application    | 07.08.2024                                                        |

**ORDER ON I.A.NO.IV FILED BY THE 1<sup>st</sup>**  
**DEFENDANT / PETITIONER UNDER SECTION 151**  
**OF CPC**

The defendant has filed this application U/s 151 of CPC pray for received the written statement after condoning the delay.

**2.** At the stage of hear on IA No.II 1<sup>st</sup> defendant has filed this application to received the written-statement after condoning the delay.

**3.** In the affidavit filed in support of application, the 1<sup>st</sup> defendant contended that, plaintiff has filed this suit seeking partition of suit schedule property. 1<sup>st</sup> defendant in the suit intended to file written-statement but due to her fragile health condition she has not able to contact her counsel to file written-statement. Delay in filing written-statement neither intentional nor deliberate, if the application is allowed no harm to the plaintiff. Hence pray for allow the application.

**4.** The learned counsel for plaintiff has filed objection to I.A No.IV and stated that, the application filed by the 1<sup>st</sup> defendant either in law or fact. The written-statement of the 1<sup>st</sup> defendant has taken not filed after given several opportunities. In the above case sufficient opportunities have been given to the 1<sup>st</sup> defendant to filed their written-statement. However the 1<sup>st</sup> defendant has not filed her written-statement within time. The petitioner has not explained that, how many days in delay filing the written-statement no mention of exact period of delay is fatal. As such in this ground alone the application filed the petitioner has to be dismissed. The reason given for

condoning the delay in filing written-statement cannot be believed and no supported documents are produced. Hence pray for dismiss the application.

**5.** Heard the arguments learned counsel appearing for both parties and perused the material on records.

**6.** The following points would arise for court consideration.

**1. Whether the I.A No. IV filed by the 1<sup>st</sup> defendant U/s 151 of CPC is deserves to be allowed or not?**

**2. What order ?**

**7.** Answer to the above points are as under:

Point No.1 : In the **“Affirmative”**

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

### **REASONS**

**8. Point No.1:-**It is settled principle of law that procedural Law should not be the mistress of justice, but should be a hand maiden of justice. In other words, the procedure should be enforced to meet the ends of justice and not to deprive any party of his rights.

**9.** In present case on hand, the 1<sup>st</sup> defendant sworn to that, due to her fragile health condition she could not contact her counsel to file written-statement. Hence the defendant has not filed within time. Hence the defendant has got genuine valid and lawful defence to pleaded in the above suit.

**10.** The plaintiff has filed this suit for the relief of partition against the defendants. After the institution of suit as contemplated under law the suit summons to

came to the issued to the defendants. In response of suit summons, the defendant No.1,3 and 6, 7 have appear before the court through their counsel on 16.8.2023, but they could not filed written statement in time. Hence defendant NO.1,3, 6 and 7 have taken has not filed on 10.09.2023. Thereafter case is posted for hear on IA No.II. At this stage 1<sup>st</sup> defendant has filed this application for received the written-statement after condoning delay.

**11.** The submission of the defendant counsel is the 1<sup>st</sup> defendant is aged about is 87 years due to fragile health condition she could not contact her counsel to file the written-statement. The delay in filing her written-statement neither intentional nor deliberate. If the application is allowed no harm will be caused to the plaintiff. Hence pray for allow the application.

**12.** The submission of plaintiff counsel is the 1<sup>st</sup> defendant has not filed written-statement after given several opportunities. The reason given for condoning the delay in filing written-statement cannot be believed and no supporting documents are produced. Hence pray for dismissal of application.

**13.** Upon going through the content of the affidavit of the defendant No.1 shows that due to her fragile health condition she could not contact her counsel to file written-statement. Moreover the 1<sup>st</sup> defendant is aged about is 87 years old. It is already stated that, the plaintiff has filed this suit for against the defendants for the relief of partition. 1<sup>st</sup> defendant is the contesting defendant hence written-statement of the 1<sup>st</sup> defendant is very much

necessary for proper adjudication of the case. If the application is allowed no harm will be caused to the plaintiff, otherwise it will lead multiplicity of proceedings.

**14.** It is relevant to note hear that the decision in Writ Petition 202408/2015(GM): CPC between Shabana V/s Krishnappa the apex court held that: From the sequence as noticed above, there can be no doubt that there was delay in filing the written statement. Even if that be the position, the court below ought to have kept in view the position of law declared by the Hon'ble Supreme Court that the time frame provides is only directory and not mandatory in appropriate case court below could have condoned the delay and accepted the written statement. In the present case on hand it is seen that the suit was instituted on 02.8.2023, if that to be position, even though there was some delay in filing the written statement the court ought to have condoned the delay subject to terms and the written statement should have been taken on record.

**15.** The principle laid down in the above said ruling aptly applicable to be present case. Therefore this case there is a sufficient and reasonable ground to condoned delay for filing written statement and permitted to defendant to contest the suit.

**16.** If the present applications are allowed, no hardship or injury would be caused to be plaintiff. On other hand, if it is rejected, the defendant would be disproved of their defence and it would lead to multiplicity of proceedings. It also would amount to punishing the defendant for their

ignorance. Therefore, no reason to reject the prayer of the defendants. Accordingly this court answered Point No.1 in the **affirmative**.

**17. Point No.2:-** In view of discussion made supra this court proceed to pass the following:

**ORDER**

*I.A.No. IV filed by the defendant  
No.1 under section 151 of C.P.C. is  
hereby allowed on cost of Rs. 1,000/-  
and written statement of defendant  
No.1 taken record.*

(Dictated to the stenographer, directly on the computer, corrected and signed by me and then pronounced in the Open Court on this 7<sup>th</sup> day of August 2024)

(Sandesha. K.)  
Prl. Civil Judge & JMFC.,  
Belthangady