

OS 17/2021 Dt:29-11-2022

**Orders on application filed by the 1st
defendant Under Section 151 of CPC**

Defendant has filed this application under Section 151 of CPC prays to condone the delay in filing the written statement and permit defendant to file written statement.

2. In the Affidavit it is stated that, due to his personal inconvenience, he could not contact his Advocate for giving instructions to prepare written statement. Hence he could not file written statement within time. Non-filing of written statement is not deliberate. Hence, prays to allow the application.

3. The plaintiff counsel has filed objections and stated that, the defendant has filed the present application only to harass and delay the proceedings. There is a delay of more than one and half year in filing written statement. The Court cannot wait for the defendant's inconvenience. The evidence of

plaintiff is concluded and posted for final arguments. At this stage, the defendant has prayed to receive the written statement. Hence, prays to reject the application.

4. Heard and perused.

5. Defendant has filed I.A. and prays to condone the delay in filing the written statement and permitted the defendant to file written statement. Under such circumstances this Court relied upon the decision in **AIR 2005 SC 3353 Salem Advocate Bar Association, Tamil Nadu V/s Union of India**, it has been clearly held that,

“The provisions including the proviso to Order 8 Rule 1 of the CPC are not mandatory but directory. It has been held in that decision that the delay can be condoned and the written statement can be accepted even after the expiry of 90 days from the date of service of summons in exceptionally hard cases.”

6. The above decision is applicable to the present case in hand, hence, delay is condoned. Hence, this court proceed to pass the following:

ORDER

I.A.No.III filed by the 1st defendant under Section 151 of CPC is hereby allowed on cost of Rs.1,500/-.

The delay of 427 days is condoned and defendant no.1 is permitted to file written statement.

Call on 19.01.2023.

Sd/-

Civil Judge and JMFC,
Moodbidri