

27.09.2024

ORDER ON IA No.9

Defendant No.9 has filed this application under Sec.148 and 151 of CPC and prays to receive the written statement of him after condoning the delay.

2. In an affidavit filed by defendant No.9 it is stated that, since he was out of station, he could not call his advocate to prepare and to file his written statement within time. The delay is not deliberate, therefore deserves condonation. Hence, prays to allow the application.

3. On the other hand, counsel for defendant No.1 has filed objection by denying the affidavit averments and stated that, the present application is false, frivolous, vexatious, unjust and it is not maintainable under law or on facts. There is an inordinate delay in filing the written statement more than five years. Defendant No.9 has not given any documents in support of the application. Hence, prays to dismiss the application with exemplary cost.

4. Heard and perused.

5. Defendant No.9 has filed I.A. and prays to condone the delay in filing the written statement and permitted him 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**, wherein 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. As such, this Court proceed to pass the following:

ORDER

I.A. No.9 filed by defendant No.9 under Sec.148 and 151 of CPC is hereby allowed.

The written statement filed by defendant No.9 is taken on record.

Sd/-

C/c of Civil Judge & JMFC,
Moodbidri

