

The Advocate for defendant No. 3 has filed applications U/Sec. 5 of Limitation Act and U/Sec. 151 of CPC seeking permission of the Court to file written statement by condoning delay.

The Advocate for plaintiff submitted objection stating that, the defendant No.3 has filed the application to delay and drag on the proceedings. The defendant No.3 is tenant in one of the suit property. The defendant No.3 having colluded with other defendants and defendant No.1 is collecting the rental amount from defendant No.3. This is a suit for partition and defendant No.3 is a formal party and hence, sought prayer in application No.2 for depositing the monthly rental before this Court. The both applications are filed after lapse of more than one year and the plaintiff already lead evidence and the matter was posted for cross-examination of PW.1. Hence, prays to reject the applications.

Heard. Perused records.

On perusal of order sheet, the defendant No.3 has appeared before the Court on 06.08.2025. The Advocate for defendant No. 3 filed application seeking permission of the Court to file written statement on 08.01.2026. O. 8 R. 1 of amended CPC held that, *when the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written*

statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file written statement and the Court shall not allow the written statement to be taken on record. The proviso O. 8 R.1 is not discretionary of the Court. The Court should not have permitted filing the written statement in exercising inherit power after 120 days from service of summons to defendants. The discretionary power of Court after 120 days is taken away by proviso O. 8 R. 1 of CPC. When the law is mandate, the Court should not allow the defendants to file written statement. Hence, I proceed to pass the following;

ORDER

The applications filed by defendant No. 3 U/Sec. 5 of Limitation Act and U/Sec. 151 of CPC is hereby rejected.

Sd/-

Prl. SCJ, Hubballi.