

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE &
J.M.F.C., HUBBALLI

Present:

SMT. SARVAMANGALA K.M.,
B.A. LL.B.,
I Additional Senior Civil Judge and JMFC.,
Hubballi.

O.S. No.39/2025

Dated this the 22nd day of January, 2026

Plaintiff : Gadigeppa S/o Ramappa Amargol.
.Vs.

Defendant : Dr. Subbanagouda S/o Gurunath
Kulkarni @ Patil and others.

PARTIES TO I.A. No.IV

Applicant/s : Dr. Rayanagouda S/o Gurunath
Kulkarni.
.Vs.

Opponent/s : Maruti S/o Bharamappa Kabber.

- i. Provision under which : Under Sec.151 of CPC.
application is filed
- ii. Relief sought for : Seeking permission to file written
statement by setting aside the order
dated:04.06.2025 as written statement
of defendant No.2 taken as not filed.
- iii. The date on which : 26.11.2025
application is filed
- iv. Number of the : IV
application

- v. The date on which : 06.01.2025
objections are filed by
different opponents
- vi. The date on which : 22.01.2026
orders were passed on
the said application

ORDERS ON I.A. No.IV

The counsel for defendant No.2 has filed an application under Sec.151 of C.P.C. seeking permission to file written statement by setting aside the order dated:03.07.2025 as written statement of defendant No.2 taken as not filed.

2. The plaintiff has filed objection to the said application.

3. I have heard the arguments canvassed by both counsels.

4. The following point is arises for disposal off the application.

“Whether the reliefs sought by the defendant No.2, can be granted ?”

5. My finding to the above point in the Affirmative for forgoing;

REASONS

6. This is the suit filed by the plaintiff for the relief of Specific Performance of Contract against the defendants. When the matter was posted for further chief of P.W.1, the defendant No.2 came up with this application seeking permission to file his written statement taken contention that due to non availability of some material documents he could not contact

his counsel. Therefore, could not contact his counsel and give him instructions to file their written statement. That non filing of the written statement on the said date was neither intentional nor deliberate. But the same was due to bonafide cause and reasons. The defendants have material facts to be brought on record by way of filing of their written statement. Hence, it is just and necessary to set aside the order and there accord permission for them to file their written statement, as otherwise they will be put too much loss and injustice which cannot be compensated in terms of money. On the contrary no loss or prejudice will be caused to the plaintiff.

7. The objections of the plaintiff is that the Hon'ble Court has given the sufficient opportunity to file the written statement, the defendants have not availed the opportunities to file their written statement. Now, the stipulated period to file the written statement has been lapsed and the evidence of the plaintiff has been recorded by this Court. Now they have sought the permission to file the written statement, which is not permissible under law and the defendants have not shown the sufficient cause for non filing of the written statement within the stipulated period. Hence, prayed to dismiss the application with costs.

8. Anyhow on perusal of the order sheet it is noticed to the Court that the written statement of defendant No.1, 2 and 4 taken as not filed on 04.06.2025 after granting number of opportunities. Admittedly, the matter was set down for further chief of PW-1, the defendant no-2 filed present application, hence there is a delay upon the defendant No.2 to file the

*present written statement. It is not in dispute that the suit was instituted prior to the amendment of the Code of Civil Procedure, 1908. Prior to the said amendment there was no rigid or mandatory time limit prescribed for filing the written statement and the court possessed ample discretion to receive the same at a later stage in the interest of justice. The delay has been explained in the affidavit filed in support of the application. No malafides are attributed and no serious prejudice would be caused to the plaintiff if the written statement is taken on record. On the other hand, refusal to receive the written statement would result in denial of an opportunity to contest the matter on merits. The Hon'ble Supreme Court has held in so many decisions that procedural provisions relating to filing of written statements are intended to advance justice and not to defeat it. This principle applies with greater force to suits governed by the pre-amendment CPC. Anyhow the delay is caused on the part of the defendants and delay is not a criteria to dismiss the Prayer of the defendant. It can be compensated by way of imposing suitable costs to the other side. Hence in view of the above facts and settled legal position, this Court is of the opinion that the application deserves to be allowed on costs. Hence, I answer the **point No.1 in affirmative**. Hence, I proceed to pass the following:*

ORDER

I.A. No.IV filed by the defendant No.2 under Sec.151 of CPC is hereby allowed on payment of cost of Rs.500/-.

*Resultantly, subject to payment of cost
written statement of defendant No.2 taken on
record.*

*(Dictated to the Stenographer directly on computer, script corrected and then
pronounced by me in the Open Court on this the **22nd day of January, 2026**)*

sd/-

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.*