

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.199/2025

Dated this the 13th day of February, 2026

Plaintiff : Smt. Neelava W/o Fakirappa @
Mudakappa Navalgund.

.Vs.

Defendant : Smt. Parvatevva W/o Sannahanamappa
Bhagavati and others.

PARTIES TO I.A. No.III AND IV

Applicant/s : Shantayya S/o Veerayya Hasamath.

.Vs.

Opponent/s : Smt. Neelava W/o Fakirappa @
Mudakappa Navalgund.

- i. Provision under which : I.A. No.III- under Order 8(A) R/w
application is filed : Sec.151 of CPC.
I.A. No.IV - Under Sec.151 of CPC.
- ii. Relief sought for : Seeking to set aside the order of filing
the written statement as not filed and
permitting the defendant No.23 to 25 to
file written statement in the interest of
justice and equity.
- iii. The date on which : 10.12.2025
application is filed

- iv. Number of the : III & IV
application
- v. The date on which : 12.01.2026 (by plaintiff)
objections are filed by
different opponents
- vi. The date on which : 13.02.2026
orders were passed on
the said application

ORDERS ON I.A. No.III AND IV

The counsel for defendant No.23 to 25 have filed an applications under Order 8(A) R/w Sec.151 of CPC and under Sec.151 of C.P.C., seeking to set aside the order of filing the written statement as not filed and permitting the defendant No.23 to 25 to file written statement in the interest of justice and equity.

2. The plaintiff has filed objections to the said applications.

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.23 to 25, 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 partition and separate possession and declaration is concerned. When the matter was set down for await suit summons of defendant No.6, 9 and 12, the defendant No.23 to 25 came up with this application seeking permission to file his written statement taken contention that, the defendant No.25 is an old and suffering from age-related ailments. He was unable to meet his counsel because of his ill health and 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. 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. 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 defendant No.23 to 25 have appeared on 11.08.2025. Admittedly, the matter was set down for Await suit summons to defendant No.6, 9 and 12, the defendant No.23 to 25 filed present applications, hence there is a delay upon the defendant No.23 to 25 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 defendants No.23 to 25. 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.III and IV filed by the defendant No.23 to 25 under Order 8(A) R/w Sec.151 of CPC and under Sec.151 of CPC are hereby allowed on payment of cost of Rs.500/-.

Resultantly, subject to payment of cost written statement of defendant No.23 to 25 taken on record.

*(Dictated to the Stenographer directly on computer, script corrected and then pronounced by me in the Open Court on this the **13th day of February, 2026**)*

sd/-

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