

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, HUBBALLI**

Present:

Sri. Yamanappa Karehanumantappa,
Prl. Senior Civil Judge, Hubballi.

O.S. No. 263/2024

Dated this the 31st day of January - 2026

Plaintiff : Smt. Shaheen W/o Mohamed Salim
Bijapur and others.

.Vs.

Defendants : Mohammed Ali S/o Hussainsab Bijapur
and others

PARTIES TO I.A.

Applicant : Mohammed Iqbal S/o Hussainsab Bijapur

.Vs.

Opponents : Smt. Shaheen W/o Mohamed Salim
Bijapur and others.

ORDER ON IA

The Advocate for defendant No. 3 has filed application U/Sec. 151 of CPC to condone the delay and seek permission of the Court to file written statement.

2. Along with application the defendant No.3 has filed affidavit stating that, the plaintiff has filed the suit against the defendants for the relief of partition and separate possession based on the alleged Gift Deed. For the purpose of filing written statement he was in the process of availing

certain documents pertaining to the suit property and the details in respect of other properties and family assets and liabilities and also he was not keeping well for some days and hence, the delay is caused. The plaintiff under all hurried attempt has come forward to lead the evidence and the matter posted accordingly. There is no deliberate or intentional act on his part in not filing the written statement on the date fixed for and it was because of inevitable and bonafide reasons. Therefore, prays to allow the application.

3. The Advocate for plaintiff has filed objection stating that, the IA filed by defendant No.3 to file written statement at this belated stage is not maintainable. The defendant No.3 was impleaded as party to the present suit on 14.11.2024. The defendant No.3 had sufficient opportunity to file written statement. Despite lapse of more than 120 days from the date of impleadment the defendant No.3 failed to file written statement and hence, he cannot be permitted. Upon lapse of the statutory period prescribed U/O. VIII R. 1 of CPC the right of defendant No.3 stood forfeited and it cannot be extended indefinitely by invoking the inherent powers U/Sec. 151 of CPC. Hence, prays to dismiss the application.

4. Heard both side. Perused the same and perused the materials on record. The following points arise for my consideration:

1. Whether defendant No.3 has made out a ground to allow the application ?
2. What order?
5. My answer to the above points are as under.

Point No.1 : In the Negative.

**Point No.2 : As per final order,
for the following:**

REASONS

6. **Point No.1:** Admittedly, the plaintiff has filed this suit against the defendants for the relief of partition and separate possession based on the alleged Gift Deed. On perusal of order sheet, the defendant No. 3 has been impleaded as party by the order of this Court on 14.11.2024. The plaintiff has filed amended plaint on 04.01.2025. On 18.01.2025 the Advocate for defendant No.3 prays time to file written statement. The Advocate for defendant No.3 filed application seeking permission of the Court to file written statement on 07.01.2026. The plain reading of 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 defendant. 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. Accordingly, I answer point No.1 in **Negative**.

7. **Point No.2:** In view of my answer to point No.1 as stated above, I proceed to pass the following;

ORDER

The I.A. filed by defendant No.3 U/Sec. 151 of CPC to file written statement is hereby rejected.

(Dictated to the Stenographer directly on computer, computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the **31st day of January - 2026**)

Sd/-
(Yamanappa Karehanumantappa)
Pri. Senior Civil Judge, Hubballi.