

ORDERS ON I.A NO.XXII

I A No.XXI1 filed by the applicant/defendant No.14 under sec. 151 of CPC., praying to condone the delay in filing written statement.

In the affidavit the 14th defendant stated that, the plaintiffs have filed suit for the relief of partition and separate possession against him and other defendants. After impleading of this defendant, plaintiff has filed amended plaint and Court has not fix the date for filing of written statement.

This defendant was under the impression that, his Advocate filed written statement. When this defendant was preparing for evidence, he had noticed about the non-filing of statement. If the application is not allowed and not permitted to contest the matter, it will cause irreparable loss to the defendants. Hence, prays to allow the IA.

Plaintiffs have filed objections to I.A.No.XXII and wherein they have contended that, there is no proper reasons in the application filed by the defendants. After impleading of this defendant he has not sought any time for filing written statement. The Advocate for defendant No.14 is regularly participating in the suit. There are 7 years, 7 months delay in filing written statement.

The defendant has not assigned proper reasons for in ordinate delay in filing of written

statement. Hence prayed that I.A may be rejected.

Heard

Points for Consideration.

- 1) Whether applicant/defendant No.14 has made out grounds to allow the above said I.A?
- 2) What Order?

REASONS

Point No.1:- On perusal of order sheet it is noticed that, on 9.3.2012 IA No.VIII was allowed. As per order plaintiff was carried out amendment and defendant No.14 was came on record. The plaintiff filed amendment plaint on 5.4.2012.

The plaintiff has not taken steps to issue suit summons to the defendant No.14. After impleading of additional defendants it is the duty of the plaintiff to take steps to the additional defendants. In this case even though suit summons has not issued, Advocate is participating in the proceedings.

Even though there is 7 years delay but as stated above it is not within the knowledge of defendant No.14. Unless the suit summons issued, he cannot present and participate in the proceedings.

There is no fault on defendant No.14 in not filing statement. Even though he has not filed defence but he has cross-examined the PW.1 also. Hence, there is no delay tactics on defendant

No.14. Hence, in the interest of justice and equity opportunity is providing to file written statement by imposing cost, it will not cause any hardship to the plaintiff.

As such I am opinion that the application filed by the defendant deserves to be allowed. In the light of the above discussions I answer point No.1 in Affirmative.

Point No.2: - In the result, I proceed to pass following order.

ORDER

I.A.No.XXII is allowed on cost of Rs.500/-.

Written statement of defendant No.14 is taken on record subject to payment of cost.

Additional issues framed.

C. J. & JMFC., Alur.