

**ORDERS ON IA UNDER SECTION 151 OF THE CODE OF
CIVIL PROCEDURE**

The Defendant No.4 has filed the present application seeking to condone the delay in filing the written statement and it is contended that due to ill health he was unable to meet his Advocate and to furnish necessary instruction and the documents well in time and file the Written statement in time.

2. The Learned counsel appearing for the Plaintiff would submit that the same could be allowed on costs.

3. Having heard the learned counsel for the parties the points that arise for my consideration are

1. Whether the Written statement of Defendant No.4 could be taken on record?

2. What order?

4. My answer to the aforesaid point is in the ***Affirmative*** for the following;

REASONS

5. At the outset it is to be noted that the present suit is one for the relief of partition and separate possession. Therefore it becomes necessary for the Court to examine the entitlement or otherwise of the Plaintiff to the same. Though there is a delay, fact is, the pandemic that struck between 2020 and 2021 and the consequent closure of Courts as was directed by the Hon'ble Apex Court is also a factor that the Court would have to weigh in.

6. Further the Hon'ble Apex Court in *Kailash Vs. Nankhu* reported in **2005(4)SCC 480** has held as under:

46. We sum up and briefly state our conclusions as under:

(iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the Defendant. It does not impose an embargo on the power of the court to extend the

time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the Defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the Defendant and also be placed on

record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the Defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the Defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.

Therefore this Court would have to take a liberal view in the matter and see that it does not shut out any defence that the Defendant No.4 might otherwise have. Therefore I Pass the following:

ORDER

The Written statement of the Defendant No.4 is taken on record. Call on 13.04.2023 for Issues.

(PRAVEEN.R.J.S)
CIVIL JUDGE, HOLENARSIPURA.