

IN THE COURT OF THE CIVIL JUDGE & JMFC.,

BYADGI

Dated this the 09th day of August 2019

Present

Sri. Rajesh.N.Hosamane., B.Sc.ML.

Civil Judge & JMFC

Byadgi

OS.No.26-2014

Plaintiffs: 1) Smt.Netravati W/o. Shantappa
Lakmapur, R/o: Bevinahalli, Tq:
Harihar, Dist: Davangere and an-
other.

- Vs. -

Defendants: 1) Hanumantappa S/o.
Hanumantappa @ Hanumappa
Tahasildar @ Balakkanavar and
others.

I.A.No.8

Applicant Hanumantappa S/o.
(Deft No.1 & 3) Hanumantappa @ Hanumappa
Tahasildar @ Balakkanavar and
others.

- Vs. -

Opponents Netravati W/o. Shantappa
(Plaintiffs) Lakmapur and another.

ORDER ON I.A.No.8 FILED U/O 8 RULE 1 R/W SECTION
151 OF CPC

This is an application filed by defendant No.1 seeking per-
mission to file written statement by condoning the delay.

2. The counsel for plaintiffs filed their objections and submitted that, the application filed by defendant No.1 is false, frivolous and not tenable under law and on facts.

3. On the basis of application and objections, following points arise for my consideration:

POINTS

1) *Whether the I.A.No.8 filed by defendant No.1 and 3 U/o. 8 Rule 1 R/w Section 151 of CPC for seeking permission to file Written Statement is deserves to be allowed at this stage?*

2) *What order?*

4. Heard both sides and perused the materials available on record. My answers to the above points are as under:

Point No.1 : In the Negative

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

REASONS

5. Point No.1: It is submitted by defendant No.1 in the affidavit filed along with application that, on 06.08.2015 the Court ordered that, written statement of defendants is not filed. He is residing in Patyapur Village of Harihar Taluk for the last 6 years along with his wife

defendant No.3. He is suffering from Diabetes and he has not consulted his counsel. In the meantime, the elders have advised that, they are going to compromise the suit. Further, some relevant documents have not available in time. Hence, there is delay in filing the written statement. There is no deliberate or intentional delay in filing the written statement. If the application is not allowed, he will be put to great and irreparable loss. Hence, prayed to allow the application.

6. The plaintiffs in their objections contended that, on 06.08.2015 the Court ordered that, the written statement of defendants is taken as not filed. Thereafter, plaintiff No.1 is examined as PW.1 and cross examination of PW.1 is taken as closed. The defendants have to file their written statement within 30 days of the service of summons. At the most they have to file their written statement within 90 days with the permission of the Court. The defendants have filed this application to file the written statement after laps of 4 years, which is not maintainable in the eye of law. The defendant No.1 has filed his affidavit by making false contentions. There are

no documents produced by the defendant No.1 to 3 in order to prove those contentions. If the application is allowed, the plaintiffs will be put to great and irreparable loss. Hence, prayed to reject the application.

7. Order 8 Rule 1 of CPC states that: The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defense:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

8. The defendants are expected to file the written statement within thirty days from the date service of summons. Upon an application the defendants may file the written statement beyond the thirty days but not beyond ninety days. But in this case the defendants have not filed the written statement within thirty days from the date of receipt of the summons. The defendant No.1 and 3 appeared in this case on: 21.04.2014. The defendant No.1 and 3 ought to have filed written statement on:

21.07.2014 ie., within 90 days from their appearance. But they have not filed the same. But they have filed this application on: 31.05.2018 for seeking permission to file written statement after gap of almost 4 years. Though the defendant No.1 has stated that he has not traced out documents and he is suffering from illness. The defendant has not produced any documents to show that he is suffering from illness. Moreover, there are catena of decisions of the Hon'ble High Courts and Hon'ble Supreme Court that, the WS of the defendant cannot be taken after 90 days of service of summons.

9. In this case the defendant No.1 filed application for filing written statement after gap of 4 years. The defendant No.1 and 3 have not made out reasonable grounds for the delay caused. Further, the Hon'ble Apex Court held that, the defendant has to show that he will come within exceptional circumstances for to condone the delay. Moreover, there is an extraordinary delay in filing the written statement and the present application is filed when the case is posted for Cross examination of PW.1. If the application is allowed the plaintiff will be put to

injustice. Hence, I answer point No.1 in the Negative.

10. **Point No.2:** On the basis of discussion made in point No.1 and the reasons assigned therein I pass following.

ORDER

The application ie., I.A.No.8 filed U/o.8 Rule 1 R/w Section 151 of CPC by defendant No. 1 and 3 for seeking permission to file the written statement is hereby dismissed.

(Dictated to the Stenographer, transcription typed by her, revised and corrected by me, signed and then pronounced in the open Court on this 09th day of August, 2019)

**Civil Judge & JMFC.,
Byadgi.**

