

IN THE COURT OF THE CIVIL JUDGE & JMFC.,

BYADGI

Dated this the 28th day of August, 2019

Present

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

Civil Judge & JMFC

Byadgi

OS.No.265/2017

Plaintiffs: 1) Pulakeshi S/o. Guddappa
Busammanavar and another.

- Vs. -

Defendants: 1) Yallappa S/o. Neelappa Peddar
and others.

I.A.No.2

Applicants 1) Sri.Yallappa S/o. Neelappa Peddar
(Deft No.1,2,3) and others.

- Vs. -

Opponent 1) Pulakeshi S/o. Guddappa
(Plaintiffs) Busammanavar and another.

**ORDER ON I.A.No.2 FILED U/o. 8 RULE 1 R/W SECTION
151 OF CPC**

1. This is the application filed by the defendant No.1 to 3 for seeking permission to file written statement.

2. The counsel for plaintiffs filed objections to IA.No.2 and contended that, the application filed by the defendant No.1 to 3 are false, frivolous and not maintainable in the eye of law and on facts.

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

POINTS

1) *Whether the I.A.No.2 filed U/o.8 Rule 1 R/w Section 151 of CPC by the defendant No.1 to 3 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 Affirmative
Point No.2 : As per the final order
for the following.

REASONS

5. Point No.1: It is submitted by the defendant No.2 in his affidavit filed along with IA.No.2 stated that, the plaintiffs have filed false suit against them. He has not filed written statement within time. Since he is suffering from illness and some of the documents which are very material to prove the case have not been traced out in time. Therefore, the Court pleased to set-aside the order

dated 16.01.2018 and permit the defendant No.1 to 3 to file their written statement in the interest of justice and equity.

6. The plaintiffs in their objections contended that, defendant No.1 to 3 have appeared in this case through their counsel on 15.12.2017 and thereafter until 15.04.2019 they have not filed any written statement and after the evidence of PW.1 when the case is fixed for cross examination of PW.1 ie., on 15.04.2019 they have filed the present application for seeking permission to file written statement of defendant No.1 to 3. The same is not permissible under law. As per the Order VIII Rule 1 of CPC the defendant shall have to file their written statement within thirty days from the date of service of summons and 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 prescribed 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.

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.”

7. 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 to 6 appeared in this case on: 15-12-2017. The defendants ought to have filed written statement on: 15-03-2018 ie., within 90 days from their appearance. On 16-01-2018 the Court ordered that written statement of defendants is taken as not filed. Since then the defendants have not filed any application in order to file written statement. But on: 15-04-2019 the defendant No. 1 to 3 have filed the present application. It is submitted by defendant No.2 that, since

he is suffering from illness and hence, he is not able to meet his counsel in time. This is suit for permanent injunction in respect of suit property.

8. The defendant has filed the written statement after gap of more than a year. Though, there are many decisions of Hon'ble Apex Court and Hon'ble High Courts that, after lapse of 90 days, the Court cannot receive written statement. But looking at the facts and circumstances of the case if the defendants No.1 to 3 are permitted to file their written statement no injustice will be caused to other side. Moreover, the plaintiff can very well cross-examine defendants to prove his case before the Court. If the application is allowed on costs, for causing delay then it will not prejudice the interest of plaintiff. On the other hand if the application is not allowed then defendants will be put to injustice which is not compensated in money or in kind. Therefore, I answer point No.1 in the affirmative.

9. Point No. 2: On the basis of discussion and observation made on point No.1 and the reasons assigned therein I proceed to pass following

ORDER

*The application ie., I.A.No.2, U/o.8 Rule 1
R/w Section 151 of CPC filed by the defendant
No.1 to 3 for seeking permission to file written
statement is hereby allowed on cost of
Rs.1,500/-.*

*(Dictated to the Stenographer, transcription typed by her, revised and
corrected by me, signed and then pronounced in the open Court on this 28th day
of August, 2019)*

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