



COMMON ORDERS ON
I.A No.II to I.A.No.IV

The applicant/defendant has filed I.A.No.II U/s.151 of C.P.C., seeking to defer orders on I.A.No.I, I.A.No.III U/s. 151 of seeking

permission to file objections to I.A.No.I and I.A.No.IV U/o 8 Rule 1 R/w 151 of C.P.C., seeking permission to file written statement in the suit by condoning delay if any.

2. The said applications are resisted by the plaintiff's counsel by filing common objections inter alia among various grounds.

3. Heard the arguments of counsel for both the sides and perused materials available on record.

4. The points that would arise for the consideration of this court are as follows:-

POINTS

1. Whether the applicant has made out sufficient grounds to allow the applications?

2. What order?

5. The findings of this court on aforesaid points are as follows:-

Point No.1: In the affirmative.

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

REASONS

6. **Points No.1:-** The applicant/defendant in the affidavits annexed to the applications has specifically

deposed that due to unable to secure necessary documents on time he could not able to file written statement and as such, this court was pleased to take the written statement of him as not filed. His failure to file written statement on time is for said bonafide reasons and not intentional one. If the application is allowed, no loss caused to the plaintiff per contra, if application is rejected, he will be put to heavy loss and inconvenience. On said grounds, the applicant has prays to allow the applications.

7. Per contra, the counsel for the plaintiff by denying each and every averments of the applications and its accompanying affidavits are all as false, has filed the objections wherein, contented that the reasons for delay in file written statement is not satisfactory and the applicant has not made out sufficient grounds to condone the delay and moreover, despite granting sufficient adjournments, the defendant intentionally not filed written statement on time and thereby filed these applications to protract the proceedings and harass the plaintiff. On said grounds, the counsel for the plaintiff has prays to dismiss the applications with costs.

8. Perused the instant applications, accompanying affidavits and other materials available on record. At out set and it is undisputed that the plaintiff have filed

present suit against the defendant for the relief of recovery of possession of alleged encroached portion of the suit schedule property.

9. The applicant/defendant has filed these applications by seeking permission of this court to file necessary written statement to the case of the plaintiff on the grounds that he cannot able to file the written statement on time due to in ability to secure the necessary documents on time and further sought permission to file objections to I.A.No.I filed U/o 39 rule 1 and 2 of C.P.C., with further prayer to defer orders on said application. On the other hand, the counsel for the plaintiff by opposing the applications has filed the objections by contending that the applicant has not given sufficient reasons for delay in filing the written statement and filed instant applications to harass him.

10. In fact, on categorical consideration of entire records, it is forthcoming and apparent that as the defendants fails to file the written statement within statutory period, this court was pleased to record written statement of defendant and objections to I.A.No.I has not filed on 03-10-2023 and on the same day, as the plaintiff pressed interim application for temporary injunction as per I.A.No.I, this court heard the plaintiff's counsel on I.A.No.I and reserved case for orders to 10-10-2023. At

this juncture, on 07-10-2023 the counsel for the defendants has advanced the matter so as to file the written statement and to contest the suit as well as I.A.No.I on merits. Aforesaid facts and proceedings of the case prima facie indicates that no such inordinate delay on the part of the defendant to file the written statement. In fact, suit summons to the defendant served on 04-08-2023 and by advancing the case the defendant has filed written statement along with necessary application on 07-10-2023 which is within 90 days from the date of service of suit summons. In view of the same, there is delay of less then 60 days to file the written statement and same shall be permitted with in preview of section 148 of C.P.C.

11. The principle of natural justice implies that parties should be given with reasonable opportunities to put forth and defend their case. Though the defendant has filed the instant application by seeking permission to file his written statement after lapse of 30 days and within period of 90 days, the delay itself is not a technical ground to prevent the defendants to contest the case on merits by filing the written statement. It is well settled principle of law is that time limit of 30 days from the date of service of summons and extended period of 60 days under proviso order 8 of C.P.C., is directory in nature and same shall not be mandatory. This court got discretionary power to permit the defendant to file the written

statement even behind the period of 90 days if circumstance of the case permits in the ends of justice.

12. In the said context, this court has relied upon decision of **Hon'ble Apex Court between Kailas V/s Nankhu and others in Civil Appeal No.7000 of 2004** decided on 06-04-2005, wherein the Hon'ble Apex Court has held as follows:-

“We sum up and briefly state our conclusion as under”:-

- (i). -----.
- (ii). -----.
- (iii). -----.
- (iv). The purpose of providing the time schedule for filing the written statement under order 8 rule 1 of C.P.C. is expiate and not to scuttle the hearing. The provisions 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 of order 8 of C.P.C. is couched in negative form, it does not specify any penal consequence flowing from the non compliance. The provision being in the domain of procedural law, it has to be held directory and not mandatory. The power of the court to extend the time for filing the written statement behind the time schedule provided by order 8 rule 1 of the C.P.C. is not completely taken away.
- (v) Though order VIII, Rule 1 of the CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil cases which persuaded the 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 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 was needed to be given for the 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.

13. The principles laid down by the Hon'ble Apex Court in said case is aptly applicable to the case on hand. Though there is a delay of less than 60 days in filing the written statement by the defendant, same shall not be the technical grounds to reject the permission sought for by the applicant to file his written statement. Since the time limit fixed by proviso to order 8 of the C.P.C., is directory in nature and same is not mandatory as per dictum of **Hon'ble Apex court in Kailash V/s. Nanku** case as referred supra, thus, an opportunity to be extended to the defendant to file his written statement in order to avoid the multiplicity of the proceedings. However, it is to be noted that inconvenience and hindrance caused to the plaintiff due to delay on the part of the defendant to file the written statement can be compensated by imposing some reasonable cost which in

the opinion of the court render substantial justice to the plaintiff. Accordingly, point No.1 is answered in the affirmative.

14. **Point No.2**:- In the light of said reasons and discussions, this court has proceed to pass following:-

ORDER

I.A.No.II and III filed U/s. 151 of C.P.C., and I.A.No.IV filed by the defendant U/o. VIII Rule 1 R/w 151 of C.P.C., are hereby allowed on cost of Rs.100/-.

Consequently, written statement of defendant is taken on record and case reserved for orders on I.A.No.I is hereby deferred.

For further hearing on I.A.No.I by 02-11-2023.

**Civil Judge and JMFC.,
Hangal.**

