



**IN THE COURT OF THE CIVIL JUDGE AND JUDICIAL  
MAGISTRATE FIRST CLASS, SAVANUR.**

PRESENT : **Sri. SRINIVASA. S. N,**  
B.A., LL.M.,  
Civil Judge and JMFC.,  
Savanur.

**O.S.NO.118 / 2010**

**Dated, this day of 19<sup>th</sup> day of September, 2025**

**Plaintiffs** : Sri.Dilerkhan S/o Abdulkarimkhan Biradar &  
others

**V/s**

**Defendants** : Smt. Shahajadbegum M Biradar & others

**PARTIES IN I.A.No.LVII (I.A.No.57)**

**Applicants** : Kubra Begum Tabrezkhan Biradar  
[Defendant  
no.11]

**V/s**

**OPPONENT** : Sri.Dilerkhan S/o Abdulkarimkhan Biradar &  
[Plaintiffs] others

i	Provision under which the application is filed:-	U/O XVIII Rule 17 R/w Section 151 of the CPC
ii	Relief sought for :-	Permission to the defendant No.9 to 16, 18, 19, 21 to 24 to file the written statement
ii i	The date on which the application is filed :-	12-09-2025



i v	The date on which the objection is filed by different opponents:-	12-09-2025
v	The date on which the order was passed on the said applications :-	19-09-2025

**ORDER ON IA NO-LVII**

The Defendant No.11 has filed I.A. No.LVII (I.A.No.57) U/O VIII Rule 1 read with Section 151 of the CPC, seeking permission to the defendant no.9 to 16, 18, 19, 21 to 24 to file the written statement in the ends of justice and equity, along with the written statement and memo.

**2.** In the accompanying affidavit of the application, the defendant no.11 has stated that she know the facts of the case. Hence, she is swearing to the affidavit. She further stated that she has filed impleading application under I.A No. 13 and the said I.A came to be allowed on 19.08.2021. Due to non-availability of the documents she could not file her written statement in time and also on account of her ill health she could not meet her earlier counsel and give information to file the Written Statement and the Hon'ble Court was pleased to accord permission for her to file Written Statement. The non filing of Written Statement on the said date was neither intentional nor deliberate. But the same was due



to bonafide cause and reason as stated above. She further stated that she has material facts to be brought on record by way of filing the Written Statement. Hence, it is just and necessary to set aside the order dated 19.08.2021 and thereby accord permission for her to file the Written Statement to meet the ends of justice and equity as otherwise she will be put to too much loss and injustice. On the contrary no loss or prejudice will be caused to the plaintiffs or other defendants. Therefore prays to allow the application.

**3.** The plaintiff counsel orally submitted that the said application may be allowed on heavy cost.

**4.a)** The counsel for defendant no.1 and 2 have filed objection to said application contending that the said application and its accompanying affidavit is false, frivolous, vexatious and filed with malafide intention with the sole purpose of prolonging and protracting the suit and the same is neither tenable in law nor on facts and the same is liable to dismissed with costs. The present application is filed by Defendant No.11. Defendant Nos.8 to 13 are sisters of Plaintiffs No.4 to 7. Similarly, Defendant No.14 and 15 are also sisters of Plaintiffs No.8 to 11, while Defendant No.19 to 24 are sisters of Plaintiffs No.16 to 18.



b) Earlier the defendant Nos.8 to 24 had filed I.A.No.9 for impleadment on 09.09.2014, and subsequently filed I.A. No.13 on 04.03.2015, which came to be allowed on 19.08.2021. Despite such impleadment, these Defendants, who are admittedly sisters of the Plaintiffs, have chosen to file their Written Statement only in September 2025, i.e., after an inordinate delay of more than four years (1485 days), and at a stage when the trial of the suit has already been concluded and the matter is posted for final arguments. The reasons assigned for this belated filing arguments are vague frivolous and lacking in a bonafides. The belated filing of the Written Statement by Defendant Nos. 8 to 24 at the stage of final arguments, after a delay of eleven years from their impleadment, is not a bonafide act but a manifestly deliberate and calculated strategy to derail the adjudication of the suit. This action exposes a collusive nexus between the Plaintiffs and the said Defendants. Plaintiffs, having concluded their evidence, are now via Defendant Nos. 8-24 who are their own sisters and cousins and against whom no cause of action lies, initiate a fresh round of pleadings. The sole purpose is to create a ground for prolonging the trial, to reopen the evidence thereby abusing the process of law.



c) The Defendant Nos. 8 to 24, being pro forma defendants against whom no relief or claim has been made by the plaintiffs in the suit, have no independent cause of action necessitating their involvement beyond impleadment. Their attempt to file a written statement comes long after the issues in the suit have been framed, trial is complete and the stage is set for final argument. Allowing such a belated pleading would disrupt the defined scope of the litigation, requiring potential reframing of issues further delaying the suit. There is no exceptional cause to allow written statement after an in-ordinate delay of more than 1485 days, which has not been demonstrated here. The reasons for this 1485 day delay are fabrication, offered in bad faith to mislead the Hon'ble Court. The vague references to "ill health" and "non-availability of documents" are meaningless without particulars and details. It is also not explained as to why the other defendants, who have merely chosen to adopt the written statement of Defendant No.11, could not file the written statement within the prescribed period or at any earlier stage. What prevented the other Defendant No.8 to 24 from not filing the Written Statement within the stipulated time is not forth coming.

d) The Defendant No.11 was unwell since 2021, but has miraculously recovered in September 2025 and that Defendant



Nos.8 to 24 were all fell ill by the same mysterious illness at the same time, which rendered them unable to act for four years, only to recover in unison just in time to derail the final arguments. Did all defendants collectively fell ill together in 2021 and then collectively recovered in 2025, in time when the matter is ripe for final argument?. Such a reasoning is not only flawed, but is difficult to justify before the judicial wisdom of this Hon'ble Court. It exposes a calculated, bad-faith attempt to delay and obstruct the proceedings in collusion with Plaintiffs. Consequently, their participation would have no material bearing on the ultimate outcome of the suit. In these circumstances, no prejudice or irreparable harm would be occasioned to Defendant Nos. 8 to 24 if their written statement, which has been filed belatedly after an inordinate lapse of four years, is disallowed.

e) Conversely, permitting it would necessitate reopening the trial, recalling witnesses, and causing irreparable prejudice to Defendant Nos. 1 and 2, who have diligently completed their evidence and are prepared for final arguments. This would also violate the Hon'ble High Court's mandate to complete the trial within 6 months, of which 3 months have already been elapsed, thereby undermining judicial direction. It is significant that these defendants had themselves filed an impleading application as far



back as 2014, yet chose to remain silent for over a decade and suddenly seek to file their written statement only in the year 2025, at the very stage of final arguments. This conduct, in collusion with the Plaintiffs, having timed it precisely, when the Plaintiffs have exhausted every other means of prolonging the trial, reveals a concerted strategy between the Plaintiffs and Defendants No.8 to 24 to obstruct the conclusion of the matter. In view of the foregoing facts and circumstances, it is evident that the present application is nothing but an abuse of the process of law, intended solely to delay the adjudication of the suit. Therefore, it is most respectfully prayed that this Hon'ble Court be pleased to dismiss the I.A.No.57 with costs and compensatory costs in the interest of justice and equity.

5. Heard both sides. Perused the applications and the objections.

6. The points arise for my consideration is as follows,

**POINTS**

1. **Whether the defendant no.11 has made out sufficient grounds to allow the I.A.No-LVII ?**
2. **What order?**

7. My findings are as follows,

**Point No-1 : In the Negative.**

**Point No-2 : As per the following :-**



### **REASONS**

**8. Point No-1:-** The plaintiffs have filed this suit seeking for the relief to declare that the plaintiffs are legal heirs of deceased Nawazkhatu, declare the Judgement obtained by defendant No.1 in OS No.171/1984 on 30-10-1994 through fraud and restrain the defendant No.1 from claiming her as legal heir of deceased Nawazkhatu and for other reliefs. This application has been filed at the stage of arguments.

**9.** The defendant no.11 contended that Defendant No.11 filed impleadment application under I.A. No.13 which came to be allowed on 19.08.2021. It is stated that on account of ill-health of Defendant No.11 and non-availability of documents, she could not instruct her counsel in time and therefore could not file her written statement. It is further urged that the delay is neither intentional nor deliberate, but bona fide, and that if permission is not granted, the applicants would be put to irreparable loss, whereas no prejudice would be caused to the plaintiffs or other defendants.

The defendant no.11 counsel relied on the following decisions of Hon'ble Supreme Court of India reported in 2022 LiveLaw (SC) 465 in Bharat Kalra Vs. RajKishan Chabra, held as



follows;

*The challenge in the present appeal is to an order passed by the High Court on 12.08.2021 whereby delay of 193 days in filing of the written statement was not condoned.*

*Admittedly, the suit for injunction filed by the plaintiff is not the one which is governed by the Commercial Court Act, 2015. Therefore, the time limit for filing of the written statement under Order VIII Rule 1 of CPC is not mandatory in view of the judgment of this Court reported as 'Kailash V. Nankhu & Ors.' reported in (2005) 4 SCC 480.*

*In view of the aforesaid judgment, we find that the delay in filing of the written statement could very well be compensated with costs but denying the benefit of filing of the written statement is unreasonable.*

**10.** The counsel for defendant No.1 and 2 filed detailed objections and contended that Defendant No.8 to 24, though impleaded in the year 2014–2015, have chosen to remain silent for more than a decade and filed the present written statement now, at a highly belated stage when the trial of the suit has already been concluded and the matter is posted for final arguments. The delay of more than 1485 days since the order of impleadment dated 19.08.2021 is urged as inordinate, deliberate, and malafide. It is further argued that the applicants are only proforma defendants against whom no relief is claimed, and their belated filing, without setting up any distinct defence, is collusive



with the plaintiffs with an intention to delay disposal of the suit.  
Hence prays to dismiss the application with costs.

**11.** The defendant no.1 and 2 counsel relied on the following decisions of 1)Hon'ble Supreme Court of India reported in 2024 SCC Online SC 3468 in the case of Nitin Mahadeo Jawale and others Vs. Bhaskar Mahadeo Mutke, the Hon'ble Aepx Court held as under:-

*“4. It appears from the material on record that as the defendants failed to file their written statement in time the stage to file written statement was closed. Thereafter permission of the Trial Court was prayed for to file the written statement after a period of over 4½ years. The Trial Court permitted the defendants to file their written statement. The plaintiff being dissatisfied with the same challenged the order passed by the Trial Court permitting the defendants to file written statement after a period of 4½ years. The High Court allowed the petition and set aside the order passed by the trial court”*

Further held that.-

*6. .... Not only this, we have come across cases where the concerned advocate has filed an affidavit in favour of his client(s) saying that he was unable to attend the proceedings due to some personal reasons difficulties thereby facilitating the litigant to get the delay condoned.*

*7. .... this, by itself, cannot be a ground to*



*condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance.*

(2). Judgment of Hon'ble High Court of Karnataka reported in 2020 SCC Online Kar 5645 in the case of Ashok Murthy and others Vs. Muniyamma since deceased by her LRs and others, the Hon'ble Court has held as under:-

*"2. ....The suit is one for partition and separate possession of the suit schedule properties. The suit is at the stage of final arguments. At that stage, the petitioners/defendants No.4 to 7 filed two applications, one under Order XVIII Rule 17 of CPC to recall P.W.1 for cross-examination and another application under Section 151 of CPC to condone the delay and to take on record the written statement.....The trial Court under the impugned order rejected both the applications stating that there is no cogent reason to condone the delay of more than four years."*

*5. ....The learned counsel would submit that there is inordinate delay of four years in seeking leave to file written statement. The suit is already at the stage of final arguments and at this stage, it is not open for the petitioners/defendants to seek permission to file written statement and to recall P.W.1 for cross-examination without there being any genuine reason.*



44. *The extension of time shall be only by way of exception and for reasons to be recorded in writing howsoever brief they may be, by the court. In no case, shall the defendant be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel.*

9. ....*But the extension of time to file written statement can be only as an exception and for reasons assigned by the defendant and recorded by the court to its satisfaction. The defendants cannot be permitted to file written statement at their own sweet will.*

10. *The above decision lays down that even though Order VII, Rule 1 CPC is directory in nature it would not permit a litigant to file written statement at his sweet will and time line prescribed under the relevant provision must be given cue weightage. Delay in filing the written statement could be condoned only on reasons of extreme hardship or reasons beyond their control inspite of due diligence.*

.....*The petitioners/defendants No 4 to 7 were served with suit summons in the year 2012 itself They appeared before the Court only On 05.01.2016 by filing application under Order IX. Rule 7 of CPC which was allowed on cost. On appearance and thereafter till 02.01.2020 the petitioners/defendants No. 4 to 7 failed to file written statement nor to participate in the proceedings. Only on 02.01.2020.*

..... *There is delay of more than four years in seeking leave to file written statement. Admittedly, the application seeking leave to file*



*written statement and application to recall P.W.1 are filed when the suit is at the stage of final arguments. No valid or cogent reasons have been assigned to condone the delay. The approach of the petitioners/defendants No.4 to 7 were residing in their matrimonial house and they could not instruct their Counsel in time to file written statement. One another reason stated is that the plaintiffs had filed earlier partition suit in O.S.No.6451/2008 and they had to collect suit papers which took some time. The reasons stated are not at all valid or cogent reasons. One need not require four years to collect certified copies of the previously instituted suit. If the petitioners are residing at their matrimonial home, that would not prevent them from instructing their counsel to file written statement. The reasons stated are not bonafide and it appears that the intention of the petitioners is only to drag on the proceedings. Moreover even though suit summons was served much earlier, they took years together to put in their appearance in the suit.*

*..... ..The decision relied upon by the petitioners at paragraphs 25 observes that any order to condone the delay in time the written statement should be after a critical analysis of facts and circumstances of individual cases. The reasons assigned by the petitioners/defendant No.4 to 7 are neither satisfactory nor beyond their control.*

**12.** The counsel appearing for plaintiffs have orally submitted that the application may be allowed on heavy costs.



**13.** The defendant no.11 counsel argued that only the plaintiff can object to his application to file written statement belatedly, and that Defendant Nos.1 & 2 have no locus. Once a party is impleaded and becomes a defendant, every other party in the suit i.e., plaintiffs or co-defendants, are entitled to participate and protect their own interests. A defendant may very well oppose another defendant's application if such filing would adversely affect their rights, pleadings, or defence.

**14.** I have carefully considered the submissions of both sides and perused the records. The Order VIII rule 1 of CPC reads as follows;

***Order VIII Rule 1. Written Statement:***

*The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:*

*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.*

**15.** Order VIII Rule 1 of CPC contemplates filing of written statement within 30 days from date of service of summons, extendable up to 90 days for sufficient cause. Though the



provision is directory, the settled position of law as laid down by the Hon'ble Apex Court in majority cases is that the power to extend time must be exercised cautiously, upon sufficient cause being shown, and not to defeat the very object of expeditious disposal.

**16.** In the present case, the question arises that Whether Order VIII rule 1 of CPC applies to the impleaded defendants?. The answer is once the defendants are impleaded, they stand in the shoes of defendants and must file written statement within time. Even if they have not filed within prescribed time, the Court may allow belated written statement to avoid multiplicity of proceedings, provided sufficient cause is shown. But in this case, the defendant no.11 has failed to show sufficient cause to allow the application by condoning the delay of more than 4 years.

**17.** This court has relied on the decision of Hon'ble Supreme Court of India in Appeal (Civil) 7000 of 2004 in the case of **Kailash Vs. Nanhku and others**, wherein the Hon'ble Apex Court has held that.-

*“The text of Order VIII, Rule 1, as it stands now, reads as under :-*

*1. Written statement. The defendant shall, within thirty days from the date of service of*



*summons on him, present a written statement of his defence:*

*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."*

*Three things are clear. Firstly, a careful reading of the language in which Order VIII, Rule 1 has been drafted, shows that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Secondly, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Thirdly, the object behind substituting Order VIII, Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.*



**Further held that.-**

*(iv) The purpose of providing the time schedule for filing the written statement under Order VIII, Rule 1 of 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 of Order VIII of the 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 VIII, Rule 1 of the CPC 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 causes 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.*

**18.** The Hon'ble Apex Court has clarified in several cases that though the provision is directory but not mandatory, filing of written statement at a highly belated stage cannot be claimed as a matter of right. In the present case, the applicants filed impleading application way back in 2014 and their impleading application was allowed on 19.08.2021. Yet, they have approached this Court now in September 2025, after a delay of more than 4 years. Presently, the evidence of parties is already concluded and the suit is posted for final arguments. The reasons assigned by Defendant No.11, namely her ill-health and non-availability of documents, are vague and unsupported by any documents. No medical records, no details of the period of illness, any explanation as to why other defendants did not file their written statement independently have been furnished. The defendants have failed to demonstrate exceptional circumstances with proof. The simple reason of documents not available and ill health is wholly insufficient when evidence of parties is already concluded and the suit is posted for final arguments.

**19.** Further, it is an admitted fact that the applicants are impleaded defendants, being sisters of some of the plaintiffs, and



no relief is claimed against them by the plaintiff. Permitting such a written statement at this belated stage would necessarily reopening of trial, recalling witnesses, and framing of additional issues, thereby causing serious prejudice to contesting parties who have completed their evidence. In these circumstances, this court is of the considered view that the applicants have failed to show any sufficient cause to allow the application. In view of the aforesaid reasoning and discussions, it is clear that the application filed by the defendant no.11 deserves to be rejected. Accordingly, this court answered **Point No.1 in the Negative.**

**20. POINT NO.2 :-** In view of above said discussion and reasonings, I proceed to pass the following;

**ORDER**

The I.A.No.LVII filed U/O VIII Rule 1 R/w Section 151 of the CPC, by the defendant no.11, is hereby rejected with cost of Rs.1,000/-.

The said cost is to be paid to the TLSC,  
Savanur.

*(Dictated to the stenographer on computer, corrected, signed and then pronounced by me in the Open Court on this the 19<sup>th</sup> day of September, 2025)*

**(Srinivasa.S.N)  
Civil Judge and JMFC,  
Savanur**