



**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 15th day of October, 2025

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

V/s

Defendants : Smt. Shahajadbegum M Biradar & others

PARTIES IN I.A.No.LVIII (I.A.No.58)

Applicants : Sri.Govardan S/o Shankar Habib
[Defendant no.28]

V/s

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

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| i | Provision under which the application is filed:- | U/O VIII Rule 1 R/w Section 151 of the CPC |
| ii | Relief sought for :- | Permission to the defendant No.28 to file the written statement |
| iii | The date on which the application is filed :- | 23-09-2025 |
| iv | The date on which the | 24-09-2025 |



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| | objection is filed by different opponents:- | |
| v | The date on which the order was passed on the said applications :- | 15-10-2025 |

ORDER ON IA NO-LVIII (I.A.No.58)

The Defendant No.28 has filed I.A.No.LVIII (I.A.No.58) U/O VIII Rule 1 read with Section 151 of the CPC, seeking permission to the defendant no.28 to file the written statement, in the interest of justice and equity, along with the written statement.

2. In the accompanying affidavit of the application, the defendant no.28 has stated that he know the facts of the case. Hence, he is swearing to the affidavit. He further stated that he has filed impleading application under I.A No. 16 and the said I.A came to be allowed on 19.08.2021. Due to non-availability of the documents he could not file his written statement in time and also on account of his ill health, he could not meet his earlier counsel and give information to file the Written Statement and the Hon'ble Court was pleased to accord permission for him 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. He further stated that he 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 him to file the Written Statement to meet the ends of justice and equity as otherwise he 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 to be rejected with heavy cost.

4. 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. Earlier the defendant Nos.28 had filed I.A.No.16 for impleadment and which came to be allowed on 19.08.2021. It is further submitted that the plea of ill health and inability to meet counsel, as stated in the affidavit, does not constitute sufficient diligence to justify a four year delay in filing the written statement. Mere non availability of documents is inadequate. They disputed the signature of the defendant no.28 on the accompanying affidavit of this application



and seek order for an enquiry into the same. Therefore, it is respectfully prayed that this Hon'ble Court be pleased to dismiss the I.A.No.58 with costs and compensatory costs in the interest of justice and equity and reserving the liberty in favour of defendant no.1 and 2 to initiate the appropriate proceedings against the defendant no.28 and other persons involved in this action. Therefore prays to dismiss the present application.

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

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

POINTS

1. **Whether the defendant no.28 has made out sufficient grounds to allow the I.A.No-LVIII ?**
2. **Whether permission can be accorded at the stage of final arguments ?**
3. **What order?**

7. My findings are as follows,

Point No-1 : In the Negative.

Point No-2 : In the Negative.

Point No-3 : As per the following :-

REASONS

8. **Point No-1 and 2:-** 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.28 has filed the present application seeking permission to file the written statement. The applicant contends that due to non-availability of necessary documents and his ill-health, he could not file the written statement within time. He submits that the delay was neither intentional nor deliberate, but due to bonafide reasons, and prays that permission be granted to file the written statement in the interest of justice and equity.

10. The learned counsel for the plaintiff opposed the application and submitted that the same deserves to be rejected with heavy costs.

11. The counsel for Defendant No.1 and 2 have filed detailed objections contending that the application is false, frivolous, and filed with mala fide intention to delay the proceedings. It is submitted that Defendant No.28 was impleaded as a party on 19.08.2021 in pursuance of I.A.No.16, but despite lapse of more



than four years, he has not filed his written statement. The reasons assigned in the affidavit such as ill-health and non-availability of documents are not sufficient to condone the delay. They have also disputed the signature of Defendant No.28 on the affidavit and sought an enquiry into the same. They further submit that a similar I.A.No.57 filed by Defendant No.11 on identical grounds was already rejected by this Court. Hence, they pray for dismissal of the present application with compensatory costs.

12. 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.

13. 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.

14. 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.



15. 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.28 has failed to show sufficient cause to allow the application by condoning the delay of more than 4 years.

16. 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.

17. 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 and their impleading application was allowed on 19.08.2021. Yet, they have approached this Court now, 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.28, namely his ill-health and non-availability of documents, are vague and unsupported by any documents. No medical records, no details of the period of illness. The defendant no.28 has failed to demonstrate exceptional circumstances with proof. The applicant has not shown due diligence or bona fide effort to file his written statement within reasonable time. 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.

18. On perusal of records, it is seen that Defendant No.28 was impleaded on 19.08.2021 and has not filed his written statement since then. However, during the hearing of this application, Defendant No.28 personally appeared before the Court and admitted his signature on the affidavit filed in support of the present application. This Court has verified his Aadhaar card and other identity documents, and upon such verification, the identity of Defendant No.28 has been duly established. Hence, the



objection of Defendant No.1 and 2 disputing his signature does not survive for consideration.

19. Further, it is an admitted fact that the applicants are impleaded defendant and no relief is claimed against him 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. This Court has already rejected a similar application filed by Defendant No.11 in I.A.No.57 seeking permission to file written statement at a belated stage. The present application being on the same footing deserves similar treatment. In view of the aforesaid reasoning and discussions, it is clear that the application filed by the defendant no.28 deserves to be rejected. Accordingly, this court answered ***Point No.1 and 2 in the Negative.***

20. POINT NO.3 :- In view of above said discussion and reasoning's, I proceed to pass the following;



ORDER

The I.A.No.LVIII filed U/O VIII Rule 1 R/w Section 151 of the CPC, by the defendant no.28, 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 15th day of October, 2025)

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