

ORDER ON IA No. VIII

This is an application filed by the defendant No.1 and 2 seeking permission of this court to file their Addl. written statement by setting aside order dated.03-03-2018.

2. Along with application the defendant No. 1 and 2 have filed their Addl. written statement.

3. To the application the plaintiff No.1 has filed objections wherein he has specifically contended that the Addl. written statement of defendants clearly reveals that the defendants are intending to claim relief by way of counter claim. Hence the defendants have not complied with the mandatory provision order 8 Rule 6B of CPC. Therefore the defendant No.1 and 2 by showing wrong provision of law have filed present application which is not at all maintainable and permissible under law. Hence prayed to reject the application.

4. Heard both side, perused the materials.

5. Upon going through the materials the defendant No.1 and 2 wanted to place their Addl. written statement. The only contention of plaintiff is that the defendant No.1 and 2 wanted to claim relief by way of counter claim hence they can not

put the written statement beyond the provision of law. In this regard the learned Advocate for defendant No.1 and 2 relied decision report in **2001(3) Civil L.J. 137 Laxman V/s Smt.Ratnabai and others** wherein Hon'ble our own High Court has held that in dealing with applications too technical view can not be adopted and dismissal of application on sole ground of wrong provision of law not justified.

6. The record of this matter reveals that on 03-03-2018 the Addl. written statement of defendant No. 1 and 2 taken as not filed. It also reveals that as per order passed in RA the present matter is remanded back to the trial court for fresh trial with a direction to allow the defendants to cross examine PW-1 and also produced document as such require. No doubt that appellate court with a observation remanded the present matter for fresh trial but without pleadings the matter can not be adjudicated properly as to cross examine the PW-1. The record of this court reveals that there is order against defendant No.1 and 2 dated.03-03-2018. Under the circumstances the defendant No.1 and 2 wanted to recall the same order by putting them to file Addl. written statement. However the plaintiff may take opportunity to contest the written statement by taking aid of order 8 Rule 6B of CPC. Therefore, in order to decide the real dispute between the parties if application is allowed no loss or prejudice will be caused to the plaintiff.

However for the recall of order dated.03-03-2018 it is require hereto impose cost on defendant No.1 and 2 and it would be sufficient to safeguard the interest of plaintiff. Hence I proceed to pass the following,

ORDER

The application filed U/O 8 Rule 1 of CPC is hereby allowed on cost of Rs.2,000/-.

The Addl. written statement of defendant No.1 and 2 taken on record subject to payment of cost.

For payment of cost.

Call on 10-01-2025

Sr. CJ and JMFC, Shiggaon.

Sitting At. Savanur.