

**IN THE COURT OF CIVIL JUDGE AND J.M.F.C., CHITTAPUR**

Before : Sri **K. S. Rotter**, B.Com. LL.B (Spl),  
Civil Judge, Chittapur.

**Dated this 16<sup>th</sup> day of February 2016.**

**OS No.78/2014**

1. Neelkanth Rao @ Neelkanth, S/o. Shankreppa Pagadi. ... Plaintiff

Vs.

1. Chandramma, W/o. Iranna Pagadi and others. ....Defendants.

**IA No.I**

1. Chandramma, W/o. Iranna Pagadi,  
Age: 70 years, Occ: Household,

2. Prabhurao, S/o. Iranna Pagadi,  
Age: 40 years, Occ: Asst. Teacher,

Both are R/o. Village Bhedsur, Tq: Chittapur.

... Applicants  
(Deft No.1 & 2)

(By Sri S.N. Nandurkar, Advocate)

**V/s**

1. Neelkanth Rao @ Neelkanth, S/o. Shankreppa Pagadi,  
Age: 64 years, Occ: Pensioner,  
R/o. Bhedsur, Tq: Chittapur, Dist: Kalaburagi ...

Opponent  
(Plff )

(By Sri S.G. Aland, Advocate)

**ORDERS ON I.A.No.I**

The defendants No.1 and 2 have filed this IA-I under  
Section 151 of CPC seeking permission to file written statement.

2. In support of IA-I the applicant/defendant No.1 filed her sworn to an affidavit stating that she is age old lady and suffering from ill-health, as such she has not approached the advocate and filed written statement in time and prayed for allowing the application.

3. The said application has been objected by the plaintiff by filling his written objections.

4. I have heard the arguments by both sides.

5. The points which arise for my consideration are as below :-

1. Whether the defendants No.1 and 2 have shown reasonable ground for allowing IA-I?
2. What order?

6. My findings on the above points are as under:-

1. In affirmative
2. As per final order for the following:-

#### REASONS

7. **Point No.1** : Admittedly this is a suit filed by the plaintiff for declaration and possession of suit property. It is seen from the records that, initially defendant No.1 and 2 have appeared but they have not filed written statement within 90 days against the

plaintiff's case. Hence, WS of defendant No.1 and 2 taken as not filed. Now the case is fixed for evidence. At this stage defendant No.1 and 2 come with this application stating that, she was not feeling well due to un avoidable circumstances they have not filed written statement and she has not attended the court in this case and not filed written statement within time. Hence, it caused delay for submitting their written statement. Therefore, the defendant No.1 submitted that, the delay is not deliberate one. Hence, she prayed for allowing the IA.

8. To the contrary the advocate for the plaintiff filed his objections and stated that, as per order 8 rule 1 of CPC written statement is to be filed within 30 days from the date of service of summons and thereafter within 90 days by showing reasonable cause. But in this case defendants have not filed WS within 90 days. The defendants have not shown sufficient cause for not filing the WS in the affidavit filed along with I.A.No.I. The defendants have not produced any medical certificate and only to drag on the case and give harassment to the plaintiff filed this IA. Therefore, the written

statement after 90 days is to be accepted only in exceptional cases, hence, the IA may be rejected.

9. The advocate for the defendants argued that, defendant No.1 is not feeling well at the time of filing written statement, therefore, it cause delay in submitting the written statement. The delay in filing written statement is not intentional one. I have perused the affidavit in support IA and other materials. It is true that, the defendants should have been diligent in filling the written statement well within time, but on that ground only the application cannot be rejected, it would be as good as shutting a valuable right of defendants. Hence, the delay in getting production of written statement can be suitable compensated by imposing proper and reasonable cost. If this IA is not allowed the injustice would be caused to the defendants, on the other hand no hardship will be caused to the plaintiff. Anyhow plaintiff will have got opportunity of defending the claim of defendants in their evidence. Hence, the question of causing prejudice to the plaintiff does not arise at all.

10. Moreover, in many decisions our Hon'ble Apex Court held that, order 8 rule 1 of CPC is directory in nature and after lapse of 90 days, if the defendants show the bonafide grounds for not filling WS well within time, it can be accepted in later stage also. In this regard I am relying upon the decision of **Hon'ble Supreme Court** in *AIR 2005 S.C. 242, Kailash Vs. Nanhker and others*. The Hon'ble Supreme Court in this case held that, the provision of order 8 rule 1 of CPC is directory in nature, the person seeking time behind 90 days for filling the written statement must give reasons for the delay in filing the written statement. The Hon'ble Apex court has also held the, the court is not powerless to permit a written statement being filed if the court may require, such written statement and the court need not pronounce the judgment against the defendants, who failed to filed the written statement. The Hon'ble court has also held that, all the rules of procedures are the handmaid of justice and the language employed by the draftsman of procedure law may be liberal or stringent, but the facts remain that the object of prescribing procedure is to advance the cause of justice. The Hon'ble Supreme Court also held that, no straitjacket formula can laid down for examining the circumstances, but however the time

schedule contemplated by order 8 rule 1 of CPC shall be rule and departure there from an exception, which can be only made for satisfactory and sufficient reasons.

11. I have perused the above Hon'ble court decision, the said decision is squarely applicable to the case on hand. In the present case defendants No.1 and 2 have shown a reasonable cause for condoning the delay in filing written statement. Therefore, I come to the conclusion that, the defendants No.1 and 2 have shown bonafide grounds for allowing the IA-I. Hence, I answer point No.1 in the affirmative.

12. **Point No.2** : For the foregoing reasons, I proceed to pass the following :-

**ORDER**

IA-I filed under Section 151 of CPC is allowed on costs of Rs.200/- payable to the plaintiff.

Consequently, the WS filed by the defendant No.1 and 2 is received on record subject to the payment of costs to the plaintiff.

(Dictated to the steno on directly laptop, computerized by him, corrected by me and then pronounced in open court on this 16<sup>th</sup> day of February 2016)

**(K. S. Rotter)**  
Civil Judge, Chittapur.