

**IN THE COURT OF THE CIVIL JUDGE AND JMFC., JEWARGI
AT JEWARGI.**

**Present:- Sri.D.Ramesh, BA.L., LL.B.,
Civil Judge and JMFC, Jewargi.**

Dated : This the 28th day of July, 2022

O.S.No.53/2020

Between:

Hulgeppa : **Plaintiff**

(By Sri.N.K., Adv.,)

And

Siddappa and Others : **Defendants**

(By Sri.B.B., Adv.,)

I.A.No.3

Mallappa : **Applicant/Defendant No.2**

V/s.

Hulgeppa : **Plaintiff/Opponent**

ORDERS ON IA No.3

The defendants have filed the application U/Sec.151 of CPC for seeking permission to file written statement.

2. The brief averments of the affidavits are as follows:-

That the written statement was taken as not filed. Due to Covid and ill health and old aged ailments, the defendants could not approach their counsel and instruct to file written statement. Even they could not obtain relevant documents in time. Hence the delay caused which is neither intentional nor wanton. Hence prays to allow the application.

3. On the other hand counsel for the plaintiff filed objection to the application and contended that the plaintiff filed the present suit against the defendants in respect of suit schedule property. The defendants appeared, but failed to file written statement. In spite of sufficient opportunity given by this Hon'ble court the defendants did not file written statement. Even after examination in chief the defendants failed to file written statement, when the matter posted for judgment the defendants filed written statement with this application. Hence the application is not maintainable. When the matter is posted for judgment the defendants or plaintiff have lost to file any application in the above case. In this regard Hon'ble High Court of Karnataka held the judgment of Rabiya Bi V/s The Country wide Consumer reported ILR 2004 KAR 2215 "No application can be filed after the final arguments have been heard and the matter is posted for judgment". Therefore the principles laid down by the Hon'ble High Court the application filed by the defendants is liable to be rejected.

4. Heard the arguments. Perused the records.

5. The Points that arise for my consideration are as follows:-

Point No.1:- Whether the defendants prove that the application filed by them deserves to be allowed?

Point No.2 :- What order?

6. I answer the above points as follows:-

Point No.1 :- In the Negative.

Point No.2 :- As per the final orders for the following,

REASONS

7. Point No.1 :- This is an application filed by the defendant No.1 to 4 seeking permission to file the written statement contending that due to Covid and ill health and old aged ailments, they could not approach their counsel and instruct to file the written statement. Even they could not obtain relevant documents in time. Hence the delay caused which is neither intentional nor wanton.

8. On the other hand the counsel for the plaintiff objected the application on the ground that the application is not maintainable at the stage of judgment. In this regard he relied the judgment of Hon'ble High Court of Karnataka reported in ILR 2004 KAR 2215 Rabiya Bi V/s The Country vide Consumer.

9. Having heard and on perusal of the record, it discloses that the plaintiff has filed the suit against the defendants for the relief of perpetual injunction in respect of suit schedule property. On

service of suit summons the defendants appeared through their counsel but not filed written statement during the statutory period. Hence matter was posted for plaintiff evidence. Accordingly plaintiff was examined and heard the counsel for plaintiff and posted for judgment on 06-04-2022. Meanwhile i.e., on 28-03-2022 the case was advanced on the request of defendants and the defendants have filed the present application with the written statement. Therefore admittedly the present application is filed when matter was posted for judgment. Of course the order 8 rule 1 of CPC is not a mandatory, it is only directory. Hence there is no bar to allow the defendants to file written statement even after expiry of statutory period by exercising discretionary. But as per the judgment of Rabiya Bi (supra) once the matter has been finally heard and posted for judgment, nothing is required to be done by the court except to pronounce the judgment. Therefore the application filed by the defendants for seeking permission to file written statement at the stage of judgment is not maintainable. Hence, I answer the point No.1 in the Negative.

10. Point No.2 :- In view of the above discussion, I proceed to the pass the following :-

ORDER

**I.A. No.3 U/Sec.151 of CPC filed by
the defendants is hereby dismissed.**

**In the facts and circumstance no
order as costs.**

(Dictated to the Stenographer, typed by him, corrected and then pronounced by me in the open court on this the 28th day of July 2022.)

**(D.RAMESH)
Civil Judge & JMFC.,
Jewargi.**