

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

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

**Dated : This the 23<sup>rd</sup> day of March, 2022**

**O.S.No.128/2017**

Smt. Sumitra **: Plaintiff**

**(By Sri.J.V.H., Adv.)**

And

Sri. Bhimanna **: Defendant**  
**(By Sri. P.K., Adv.)**

**I.A No.3**

Smt. Sumitra **: Applicant/Plaintiff**

V/s.

Sri. Bhimanna **: Opponents/Defendant**

**ORDERS ON IA -3**

The plaintiff has filed the application under section 151 of CPC and prayed to permit her to file re-joinder to the counter claim filed by the defendant.

**2.** The averments of the affidavit filed in support of the application are as follows:

That she could not approach her counsel to give instructions

to prepare re-joinder to the counter claim of defendant because of family problems and other problems. This Hon'ble court was pleased to take re-joinder as not filed on her behalf. Due to the above said reason she could not prepare the re-joinder. The delay caused in filing the same is not intentional one or to cause delay in the proceedings of this Hon'ble court. Hence she may be permitted to the file re-joinder. If the application is not allowed, she will put to loss and injury. On the other hand no prejudice or loss would be caused to the defendant. Hence it is just and proper to allow the petition as prayed for in the petition.

**3.** On the other hand counsel for defendant filed objection to the application and contended that IA No.3 filed by the plaintiffs is re-joinder to the written statement. The written statement filed and copy served to the plaintiff counsel on 24-02-2018 along with counter claim and objections to IA No.1. It is the duty of the plaintiff to file the rejoinder within 30 days from the date of service of written statement having notice of the same. The period of filing of re-joinder is over and the re-joinder contents are false allegations according to her whims and fancies. Moreover the plaintiff has no locus to claim to the extent of 6 acres 30 guntas from whom the plaintiff purchased has no title to sell such extent. The sale deed is false created etc., Entire re-joinder is not maintainable against the defendant and the defendant is in actual possession of 10 acres 21 guntas. Later due to encroach 35 gunta found less as per the panchanama. There is no such extent available as claimed by the plaintiff against this defendant. Suit of the plaintiff is the perpetual injunction itself is not maintainable without any declaration to the

title. The title is covered by clouds as the previous vendor has no such title to sell the land. Provision of section 151 is not applicable to file the rejoinder. Hence prays to dismiss the application..

4. Heard both side and perused the record.

5. The following points arise for my consideration.

**Point No. 1:- Whether the applicant/plaintiff proves that the application filed by her deserves to be allowed?**

**Point No.2:- What Order?**

6. I answer the above points as follows:-

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

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

### **REASONS**

7. **Point No.1 :-** Having heard and on perusal of the record it reveals that the plaintiff has filed the suit against the defendant for the relief of perpetual injunction in respect of suit property. On service of summons the defendant appeared through his counsel and filed written statement with counter claim. Thereafter matter was posted for filing of re-jointer to the counter claim. But within stipulated period the plaintiff did not file re-jointer to the written statement. Later the plaintiff came up with the re-jointer along with present application and prayed to permit her to file the re-jointer contending that she could not approached her counsel to give instruction to prepare the rejoinder to the counter claim because of her family problems. Hence the present application.

**8.** Counsel for the defendant filed objections and raised two main grounds one is stipulated period was over, and the provision of section 151 of CPC is not applicable to file the rejoinder. All other objections are regarding contentions of the both parties. The all other objections i.e., contention of the defendant and contents of the re-joinder are irrelevant at the stage. The only question before the court whether the permission is to be given to the plaintiff to file rejoinder or not.

**9.** The first ground of the defendant that section 151 is not applicable to file rejoinder. Up course there is a provision under order VIII in CPC to file written statement and or rejoinder. However mere quoting wrong provision or non mentioning provision will not a ground to reject the application or otherwise maintainable. My view is supported by the judgment of Kedar Shashikant Deshpande VS Bhor Municipal Counsel & ors Civil appeal No.10452-10457/2010 DD 10-12-2010 (para 26).

**10.** Another ground of the defendant that within 30 days the re-joinder is not filed. In the case of the Salem Advocate Association Vs. State, Hon'ble Apex Court held that even after completion of statutory period also the written statement can be filed if the grounds are made out. In the case on hand the plaintiff has contended that due to her family problems she could not approached their counsel and give instruction. The said ground is genuine one. Moreover to proper adjudication equal opportunity to be given to the both parties. Hence the application is liable to be allowed. Accordingly, I answer the point No.1 in the Affirmative.

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

**ORDER**

**The I.A.No.3 filed by the plaintiff under section 151 of C.P.C is hereby allowed.**

**Plaintiff is permitted to file rejoinder application.**

(Typed by me and corrected, and then pronounced in the open court on this the 23<sup>rd</sup> day of March, 2022.)

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