

ORDERS ON I.A.NO.24

This is an application filed by the defendants No.1 to 5, 8, 9 and 11 to 13 seeking the permission of this Court to file the written statement by condoning the delay.

2. The application is supported with the affidavit of the defendant No.13. In his affidavit, he has stated that the present suit has been filed against the defendants for declaration and partition in respect of the suit schedule properties. Now, the present case is posted for cross-examination of the PW.1. As these defendants were intending to compromise the suit with the plaintiffs, they did not file the written statement well within time. It is submitted that the non-filing of the written statement well within time is not intentional one, but, it is for bonafide reasons. It is submitted that they are ready to file the written statement and ready to cross-examine the PW.1. Hence, it is prayed to allow the application.

3. On the other hand, the learned counsel for the plaintiff has submitted his statement of objections and stated that the application is not maintainable either in law or on facts. It is submitted that the defendants have sworn to the false affidavit. It is further submitted that the averments made in the affidavit are all false and not tenable in the eyes of law. It is further submitted that the defendants have not made out any reasonable and tenable grounds. As a matter of fact, the said defendants have

filed the present application after lapse of nearly 03 years from the date of service of the summons. It is submitted that the very application is highly belated one and deserves for dismissal. The grounds mentioned in the affidavit are all false and created for the purpose of this application. On these grounds, it is prayed to dismiss the application.

4. Heard the arguments.

5. The following points would arise for my consideration:-

1) Whether the defendants No.1 to 5, 8, 9 and 11 to 13 have made out grounds to allow the application and thereby permit them to file their written statement as prayed in the application?

2) What order?

6. My findings to the above said points are as follows:-

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

Point No.2 :- As per final order,

for the following :-

REASONS

7. **Point No.1** :- This is a suit filed by the plaintiffs seeking the relief of partition and separate possession in respect of the suit schedule properties. Infact, after filing the suit, the suit summons were served upon the defendants No.1 to 5, 8, 9 and 11

to 13. Though, they have appeared before the Court, they did not file the written statement well within time. In view of this, this Court has taken the written statement of the aforesaid defendants has not filed on 13.06.2015. Thereafter, the other defendants have filed their written statement and after that, the case was posted for evidence on the plaintiffs side. Now, the plaintiffs have examined the PW.1 on their behalf and the case is posted for cross-examination of the PW.1. At this juncture, the present application has been filed by these defendants.

8. In order to entertain an application U/o.8 Rule 1 of CPC and permit the defendants to file their written statement beyond the stipulated period as mentioned in the Order 8 rule 1 of CPC, the Court is required to look in to the sufficient cause that has been assigned by the defendants. In the case on hand, these defendants No.1 to 5, 8, 9 and 11 to 13 have contended that they were intending to compromise the suit with the plaintiffs and as such, they kept quiet. According to them, the non-filing of the written statement well within time is because of the said reason. On these grounds, these defendants have prayed to allow the application.

9. On hearing on the said contention of the defendants and also by looking in to the nature of the suit as well as the rights involved in the properties, it is just and necessary to allow these defendants to file their written statement and put up their defence

before this Court. The permission to these defendants to file the written statement will enable them to contest the matter. Further, it also enables this Court to decide the controversies between the parties fairly and judiciously. Under these circumstances, I hold that the application filed by these defendants No.1 to 5, 8, 9 and 11 to 13 deserves to be allowed. However, keeping in view of the delay caused in filing the written statement, the application deserves to be allowed with heavy costs. Hence, I answer this Point in the **affirmative**.

10. **Point No.2** :- As per the discussion made on Point No.1, this Court has come to the conclusion that these defendants No.1 to 5, 8, 9 and 11 to 13 have made out grounds to allow the application with heavy costs. Hence, I proceed to pass the following:-

ORDER

The application U/o.8 Rule 1(a) r/w Sec.151 of CPC filed by the defendants No.1 to 5, 8, 9 and 11 to 13 is hereby allowed on payment of costs of Rs.2,000/-.

The defendants No.1 to 5, 8, 9 and 11 to 13 are hereby directed to pay the costs on the next date of hearing without fail.

The written statement of the said defendants is taken on record subject to compliance of the aforesaid contention.

Call on for additional issues if any
by:- **28.02.2019.**

Senior Civil Judge,
Maddur.