

**ORDERS ON IA.VII FILED UNDER SECTION 151
OF CPC**

Applicant/defendant No.9 filed this application to condone the delay in filing written statement and to receive the same on record.

2. In the affidavit accompanying the application, the applicant/defendant No.9 has stated that since he has got only the notice on IA.No.IX and he is not aware of the plaint averments, could not file the written statement in time but has got good case to urge before this court. Thus prayed to allow the application.

3. The Opponent/plaintiff filed statement of objections stating that to drag the proceedings the present application is filed. That after issuance of IA notice, the defendant No.9 appeared and filed vakalath knowing the proceedings of the suit. Hence no reasonable grounds made out to allow the

present application. Hence prayed for dismissal of the application.

4. Heard the counsel for the plaintiff. Arguments of defendant No.9 taken as heard as the defendant No.9 and his counsel remained absent.

5. On the basis of the above, the following points do arise for consideration of this Court:

- 1) *Whether the IA.No.VII filed under Section 151 of CPC is deserves to be allowed?*
- 2) *What Order?*

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

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

Point No.2 : As per final Order

for the following:

REASONS

7. In the present case, the plaintiff has sought for partition and separate possession against. When the case posted for plaintiff evidence, the plaintiff has filed IA.No.V under Order 1 rule 10 of CPC to implead the defendant No.9. After his appearance through the counsel, case posted for written statement. After giving three adjournments, the defendant No.9 failed to file written statement, hence

it was taken as nil. Thereafter filed this application to condone delay in filing written statement.

8. No doubt, the defendant has assigned the reasons that delay caused due to unaware of plaint averments. Hence, it is the settled law that in order to avoid multiplicity of proceedings and to render justice, Court should not too technical in considering the application.

In ILR 2018 KAR 2559 Smt.C.Bhagya and Others V/s M/s. Poornapraja House Building Co-operative Society Ltd., the Hon'ble High Court of Karnataka has held that "When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mal-fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. It must be grasped that, judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is excepted to defendant so."

9. As per the decision, Order VIII Rule 1 of CPC., does not deal with the power of the Court and all does not specifically take away power of the Court to take the written statement on record though filed beyond the time as provided for. In this case the provision under which the application filed is Section 151 of CPC., But, as per the decision cited above, though the case is reserved for the plaintiff evidence under exceptional circumstances, to meet the ends of justice and to prevent abuse of process of Court, it is necessary to receive the written statement on record. Hence, the following:

ORDER

The IA.No.VII filed by defendant No.9 under Section 151 of CPC., is hereby allowed.

For written statement by
04.10.2023.

**Addl. Civil Judge & JMFC.,
Periyapatna.**