

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE AND CJM, RAMANAGARAM**

Dated This 13th day of September 2019

PRESENT:

Sri. N.S.Kulkarni.,
B.Com., LL.B Spl.,
Prl., Senior Civil Judge and CJM,
Ramanagara.

O.S 292/2007

Plaintiffs :- Smt. Sarojamma and another

(By Sri. K.B.V., Advocate)

V/s

Defendants : Sri. Revannasiddappa and others

(D.1 Sri. K.S.V., Advocate)
(D.2(b & c) D.5 Sri. B.S.K., Advocate)
(D.3 Sri. Y.L.M., Advocate)
(D.4, 6 & 8 Sri. J.K.R., Advocate)
(Defendatns 9 to 12 – Exparte)

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ORDERS ON I.A'S BOTH DATED 11.06.2019
FILED BY THE DEFENDANT NO.6

I.A dated 11.06.2019 is filed by the defendant No.6
U/o 8 Rule 1 r/w r/w Sec.151 of CPC to recall the order
and to condone the delay in filing the written statement.

2. I.A dated 11.06.2019 is filed by the defendant No.6
U/o 3 Rule 1 r/w Section 151 of CPC to permit the
defendant No.6 as his power of attorney holder.

3. As both applications are interconnected, the court wish to treat both applications collectively and to avoid repetition of orders also.
4. In the affidavit appended to the first application, the defendant No.6 has filed affidavit stating that, the plaintiffs have filed the above suit for partition and separate possession of their alleged share in the suit schedule properties and that the defendant No.6 had filed an application U/o 7 Rule 11 of CPC for rejection of plaint against the defendant No.6 and that the said application was later dismissed by the order of this court. He is the under bonafide impression that the written statement has been filed in the above suit and was being represented by his advocate. In the meanwhile, the plaintiffs had filed application to bring some of the legal representatives of the deceased defendants and as a result of which, the defendant No.6 completely overlooked the status of the case and it was only on 14.01.2019 when PW.1 was to be cross examined, it was realized that by inadvertence and oversight, the written statement had not been filed and the defendant No.6 has been advised to file the written statement. The non filing of written statement is unintentional and bonafide and the subject matter of dispute pertains to an immovable property and that the rights of the defendant No.6 is restricted to item No.4 of the plaint schedule. Further, the issues have already been framed in the suit and no additional issues need be framed. The Court had already framed Issues 5 and 6 in which the burden has been placed on the defendant No.6

and therefore the written statement may be ordered to be taken on record by condoning the delay. The suit was prolonged due to various reasons including the bringing of the legal heirs of deceased defendants and that the evidence had commenced only on 04.12.2018 and that condoning the delay no prejudice will be cost. He had already taken a stand in the application filed in Order VII Rule 11 of the CPC and therefore by allowing the application and permitting the defendant No.6 to file the written statement, no prejudice will be caused to the plaintiffs and on the other hand all the issues between the parties will be adjudicated to prevent multiplicity of proceedings and the defendant No.6 under the bonafide impression that the written statement had been filed but on verification it is found that, inadvertently the written statement had not been produced. He has made out a prima-facie case to condone the delay and to permit the defendant No.6 to file the written statement and the balance of convenience is in favour of defendant No.6 to all over the application and if the application is not allowed, he will suffer and will not be able to assist the court. Hence, prayed to allow this application.

5. In the affidavit appended to the second application stating that, I am the attorney holder of defendant No.6, who is his father and that well aware of the facts and circumstances of the case. The plaintiffs have filed the above suit for partition and separate possession to their alleged share in the suit schedule properties and that the

defendant No.6 had filed an application U/o 7 Rule 11 of CPC for rejection of plaint against the defendant No.6 and that the said application was later dismissed by the order of this court. The defendant No.6 is his father and that due to his age and preoccupation is unable to attend the court Inperson and hence he has executed a power of attorney in his name to defend the suit. He stated that, granting permission to represent the defendant No.6 as the attorney holder, no harm or injury will be caused to the plaintiffs and on the other hand if the application is not allowed, the defendant No.6 will be put to inconvenience and the suit pertains to valuable property. Hence, it is prayed to allow the application.

6. The advocate for the plaintiff filed objection contending that, the petition for condoning the delay and recalling the order and also accepting the written statement is not tenable as there is no opportunity at this stage to file written statement for the 6th defendant. The application filed by the 6th defendant is dismissed on 31.01.2018 and this fact is not at all mentioned in the petition. It is more than 18 months from the date of disposing of that application and also filed false affidavit that, there is power of attorney. Hence, condonation of delay is not necessary. It is the mandatory provision that, written statement filed within 30 days and even inspite of 90 days, the 6th defendant has not filed the written statement and now filed false affidavit stating the false reasons. Hence, prayed to dismiss the application and also not to accept the written statement.

7. The advocate for the plaintiff has filed objection contending that, the written statement cannot be looked into and the application cannot be condoned. The present application for production of General power of attorney and permission is also not tenable. The grounds shown in the affidavit are false and not tenable only to delay the proceedings, the 6th defendant has filed this application. Hence, prayed to dismiss the application.

8. Now the following point emerge for consideration:-

Whether the applications deserve to be allowed ?

9. Having heard the arguments of both the counsels, the court scrutinized both the applications in the background of materials made available. Now, answer of the court on the Point is in the “Negative” for the following :-

REASONS

10. On perusal of the order sheet dated 31.01.2018 it shows that, the 6th defendant has filed application U/o 7 Rule 11 of CPC that, there is no cause of action, which is dismissed. Till today, there is no appeal or revision filed by the 6th defendant. Hence, the 6th defendant has full knowledge regarding the appearance and the contents of the plaint. Hence, he has not filed the written statement.

11. Though the 6th defendant has filed application to condone the delay and he has not made out any ground what is the cause for the delay and there is no explanation of delay and also how many days delay is caused. Under these circumstances, as the matter is old one and also the 6th defendant was intentionally did not filed the written statement and not contest the matter. Hence, I am inclined to hold the point is in the “Negative” and proceed to pass the following:-

ORDER

I.A dated 11.06.2019 filed by the defendant No.6 U/o 8 Rule 1 r/w Section 151 of CPC is dismissed.

I.A dated 11.06.2019 filed by the defendant No.6 U/o 3 Rule 1 r/w Section 151 of CPC is dismissed.

(Dictated to the Stenographer, transcribed by him, the transcript corrected and then pronounced by me in the open Court on this the 13th day of September 2019)

**Prl., Senior Civil Judge and CJM,
Ramanagaram.**