

24.03.2025

Plt: C.M.J.

D1, 4 to 6, 8: Expt

D9: K.T.S

D2, 3, 10: K.C.M.

D7: V.M.S.

For orders

I.A filed by the	Defendant No.2
Date of filing of I.A	28.11.2024
Date of filing of Objection	27.01.2025
Date of Order	24.03.2025

ORDER ON APPLICATION UNDER SEC.151 OF CPC.,

This application filed by the Defendant No.2 requesting the court to permit the plaintiff, permit the defendant No.2 to file a written statement by condoning delay of 6 years.

2. In the affidavit file accompanying this application, the Defendant No.2 Karigowda states that after receipt of summons, he has filed a vakalath through his advocate. On previous occasions, due to non-availability of some documents and due to some personal inconvenience, he could not be able to give details to his advocate to file a written statement. It is further stated that recently he has contacted his advocate and submitted the document to file a written statement. As such, there is a delay in filing the written statement. The defendant No.2 has good case on merits. Hence, if application is allowed, no prejudice would be caused to the other side. And if application is not allowed, this defendant would be put to

irreparable loss and injury. Hence, he prays to allow this application.

3. On the other hand, plaintiff counsel filed detailed objection to this application containing that application is not maintainable either in law or on facts. It is further stated that the defendant No.2 has filed his written statement with this application after lapse of 6 years from the date of service of summons. Though the multiple opportunities provided to the 2nd defendant to file written statement, he did not file written statement. The 2nd defendant come up with the present application with written statement, when the case was posted for argument. Hence, he prays to dismiss the application.

4. Heard learned counsel for the Defendant No.2 and Plaintiff and perused the materials on record.

5. The following points would arise for the consideration of this court:-

i) Whether Defendant No. 2 has made out sufficient grounds to condone the delay of 6 years in filing written statement?

ii) If so, what order?

6. My answers to the above Points are as under:-

POINT No.(i) : In the Negative;

POINT No.(ii) : As per the final order

for the following:-

REASONS

7. Point No.(i):- Undisputedly, present suit is filed by the plaintiff against defendants for the relief of partition and separate possession. The defendant No.1, 4 to 6 and 8 are placed ex-parte. Perused the entire order sheet, it reveals from the order sheet that the 2nd defendant put his appearance before this court through his counsel on the On 29.09.2018, case was posted for written statement of defendant No.2 on 30.10.2018. Subsequently, in spite of opportunity given, 2nd defendant did not file written statement. As such, statement of defendant No.2 was taken as not filed on 27.11.2018. The present application is filed by the 2nd defendant with written statement on 28.11.2024 with this application requesting the court to condone the delay of six years in filing this written statement. Undisputedly written statement is filed by the defendant No.2 after lapse of six years from the date of his appearance before the court. As per order 8 rule 1 of CPC, written statement shall be filed within 30 days from the date of service of summons. But as per proviso to rule 1 order 8 of CPC, where the defendant fails to file the written statement within said period, he shall be allowed to file written statement on such other day as may be specified by the court for the reason to be recorded in writing and payment of cost and it shall not be later than 120 days from the date of service of summons and on expiry of 120 days, from the date of service of summons,

the defendant shall forfeit the right of filing written statement. In the case on hand, the defendant No.2 has filed written statement after lapse of six years without any sufficient reasons. The reason assigned by the defendant No.2 that in spite of due to non-availability of document, he could not file written statement in time, is not bona-fide reason and what are the documents he subsequently secured and when he secured the document has not been specifically pleaded by the defendant No.2. The reasons assigned by the defendant No.2 is vague and it is not supported by any documents.

8. It is well settled position of law that can't help the person whose slept-over his right. The parties to the suit must be diligent in conducting the case. The conduct of the defendant No.2 in non-filing written statement nearly for six years is sufficient to infer that he had no diligence in conducting the case. If he had serious defence in this case, he could have file written statement in time by securing the documents. Hence, I am of the opinion that the reason assigned by the defendant No.2 to condone the delay of six years is not sufficient and bona-fide reason. Therefore, I do not find any grounds to condone the delay of six years in filing written statement. The defendant No.2 has lost his right of filing written statement by virtue of order 8 Rule 1 of CPC. Therefore, I answer point number No.1 in Negative.

9. Point No.(ii):- In view of my answer to Point No.1, I proceed to pass the following:-

ORDER

IA filed by the 2nd defendant under section 151 of CPC to condone the delay of 6 years in filing written statement is hereby dismissed with cost of Rs.500/- payable to the plaintiff.

For arguments by 17-04-2025.

Prl. Senior Civil Judge & CJM.,
Ramanagara.