

ORDER ON I.A.NO.XVII

The defendant filed I.A No.17 U/Sec.151 of CPC seeking to post the case for framing of issues.

2. In the affidavit contended that the plaintiff filed this suit. The defendant No.1, 2 and 5 have filed an application U/O 9 Rule 7 r/w Sec. 151 of CPC on 25.03.2021 to set-aside exparte order dated 25.09.2013 and the said application was allowed and posted the case for filing of written statement on 23.04.2021 again on 05.08.2021 the defendant No.1 to 3 and 5 filed the written statement and defendant No.4 filed memo to adopt the written statement of defendant No.1 to 3 and 5 after filing the written statement the case was posted for compliance on 08.10.2021 and counsels submit that no chances of settlement. By oversight this court

posted the case for further chief of PW.1 if any instead of framing of issues. Further contended that the defendant No.1 is the father of the defendant No.3, he has placed exparte on 25.09.2013, by oversight he is filed written statement 24.01.2017 and also over sight this court has framed the issues. The defendant No.1 was placed exparte without setting aside exparte order, this court written statement of defendant No.1 taken on record and framed the issues. Now it is necessary to frame the issues as per para No.8 to 14 of the written statement. Hence prays to allow the application.

3. On the other hand the plaintiff filed the objections and in the objection contended that already issues were framed and plaintiff was examined and no need to post the case for issues again. Only to drag on the matter filed this application. Hence prays to reject the application.

4. Heard the both sides.

5. After going through the materials available on record, this court has sought for clarification whether the defendant is relying which written statement out of two written statements which is filed on different dates. The defendant filed the memo stating that the written statement filed on 05.08.2021 is to be considered and not to consider the earlier written statement filed by the defendant.

Considering the same, as per the records without setting aside the exparte the written statement taken on record and subsequently again the defendant filed application and also filed written statement without bringing into the court knowledge about the earlier filing of the written statement without filing proper applications. Hence under such circumstances and also moreover the defendant contended that he going to relying the written statement dated 05.08.2021 though the written statement dated 05.08.2021 but the same has been taken on record on 19.08.2021 by the court. Hence considering the contents of the written statement and already the necessary issues were framed. The defendant taken only contention that para No.11 of written statement that the suit is hit by mis-joinder of necessary parties and also contended that in respect of pecuniary jurisdiction as the market value is more than the pecuniary jurisdiction of this court. As per the records, this suit is for specific performance of contract and the agreement is the registered agreement and question of less market value does not arise as it is a registered document. Hence under such circumstances it is necessary to frame the additional issue in respect of mis-joinder. Hence considering the material in the interest of

justice it is necessary to allow the application. Hence
this court proceed to pass the following:

ORDER

I.A No.17 filed U/Sec.151
of CPC is hereby allowed.

Addl. Issues framed.

Call on for Addl/P/Evidence
on Addl. Issues if any
15.10.2022

Prl. Civil Judge and JMFC,
Kanakapura.