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**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,
AT: MAGADI.**

Present:

**Sri. Hanumanth Satwik., LL.M,
Addl. Senior Civil Judge & JMFC., Magadi**

**DATED: THIS THE 21st DAY OF SEPTEMBER 2022
O.S.No.98/2019**

Plaintiff : Sri. Rangaswamy C. K.,
S/o. Kariyappa,
Aged about 45 years,
R/at: No.30/2, 6th Main Road,
8th Cross, Agrahara Dasarahalli,
Bangalore – 560 079.

(By **Sri. S.S.** Advocate)

--- V/s ---

Defendant : Sri. N. M. Kumar,
S/o. Late. N. N. Mallappa,
Aged about 56 years,
No.40, LIG, 1st Main Road,
1st Stage, K.H.B. Colony,
Bangalore – 560 079.
And also R/at;
S. K. Industries, No.105,
Selvam Industrial Estate,
Near KHB Bus Stop,
Magadi Main Road,
KHB Colony, Bangalore – 560 079.

(By **Sri. M.S.G. Advocate**)

ORDER ON IA NO.4 to 6

The present suit is for specific performance of contract and permanent injunction.

2. For the sake of convenience and to avoid repetition of facts, these applications are taken together for common discussion.

3. The present applications have been filed by the defendant seeking permission of this court to allow him to file the written statement. The defendant submits that due to Covid-19 pandemic, written statement could not be filed on time. He could not contact his counsel in time. In this regard, the defendant prays as above.

4. The plaintiff in the objections contended that the present applications are barred by limitation. No acceptable reasons are made out to allow the application. The defendant kept quiet for three years and the present application is filed when the matter was posted for arguments. The defendant did not approach the court with clean

hands. The defendant did not produce any document in support of his case. The plaintiff in his objections narrated the proceedings of the case. In this regard, the plaintiff prays to reject the application.

5. Heard arguments of defendant and plaintiff.

6. Considering the application and objection following points arise for my consideration.

1. Whether defendant has made out a case for permitting him to file the written statement by allowing I.A.4 to 6?
2. What order?

7. My findings for the above points are as under;

- | | | |
|------------|---|---|
| Point no.1 | : | In the affirmative |
| Point no.2 | : | As per final order
for the following ; |

REASONS

8. **Point No.1:-** It is the case of the defendant that due to Covid-19 pandemic written statement could not be filed on time. He could not contact his counsel in time. As such, he could not file written statement within stipulated time period.

9. In this regard, considering the application on hand, I am of the view that the right of the defendant to put-forth his defence cannot be curtailed, as the same amounts to curtailing the rights of the defendant to defend his case. Considering the application, I am of the further view that the plaintiff will not suffer any injury if the present application is allowed as he can contest the matter and get the same decided on merits. This being the case it is not just and proper to curtail the rights of the defendant from filing written statement.

10. On perusal of the application, it reflects that not securing documents and Covid-19 pandemic caused delay in filing the written statement. Having regard to the delay occurred in filing the written statement, I am satisfied with the reasons made out by defendant in not filing the written statement within the stipulated time period.

11. That apart, it is to be noted that, it is settled principle of law that the procedural law is hand maid of justice and procedural law should not be construed strictly so as to undermine justice. For this I rely on

the decision of Hon'ble Supreme Court of India between Salem Advocates' Bar Association v. Union of India cited in AIR 2005 SC 3353 wherein it was held thus;

“The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice and not its mistress”.

Further, it is settled principle of law that a litigation should not be terminated by default, either of the plaintiff or defendant. In this regard I am supported by the decision of Hon'ble Supreme Court of India between Robin Thapa V. Rohit Dora (Civil Appeal No.4507 of 2019), wherein Hon'ble Court held thus;

“Ordinarily, a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.”

In view of the law laid down by the Hon'ble Supreme Court of India and considering the delay occurred in filing the written statement, I am

of the view that, there is no impediment to allow the application and to permit the defendant to file written statement. In this view of the matter, the contentions raised by the plaintiff are of no avail to him.

12. It is to be considered that if the present application is not allowed defendant cannot put-forth his defense and hence the inconvenience which may be caused to him is more than the inconvenience which may be caused to the plaintiff, if the application is allowed. Further, if the application is not allowed the injury which may be caused to the defendant cannot be compensated at any cost, on the other hand, the plaintiff has the opportunity to contest the matter and get the same decided on merits. Considering the facts and circumstances of the case and for the reasons stated above and in the interest of justice and equity I decide point no.1 in the affirmative.

13. **Point no.2** : - In view of reasons on point No.1, I proceed to pass the following;

ORDER

IA No.4 to 6 filed by the defendant is hereby allowed

on cost of Rs.100/- each.

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **21st day of September, 2022.**)

(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC.,
Magadi.