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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 26th day of May 2022

OS.No.278/2019

Plaintiff : Sri. Prashant Rai @ Prashant Kumar Rai,
S/o. Ram Rai, Aged about 41 years,
R/at: No. 20, Kudlu, Harlur Road,
Kaveri Layout, Bangalore – 560 068.

{By **Sri. K.L.S.** Advocate}

-- V/s --

Defendants : 1. Smt. Sukanya,
W/o. Umshaiah @ Umesh,
Aged about 50 years,
2. Sri. Renukprasad M. U.,
S/o. Umshaiah @ Umesh,
Aged about 31 years,
3. Smt. Poornima,
W/o. Renukprasad M. U.,
Aged about 27 years,

D1 to 3 are R/at:
Megaladoddi, Madabal Hobli,

Magadi Taluk, Ramanagara District.

{By **Sri. N.K.N.** Advocate}

ORDER ON IA NO.VIII

The present suit is for specific performance of contract and for possession.

2. The present application has been filed by defendant no.1 seeking permission of this court to allow her to file the written statement. The defendant submits that due to non-availability of documents and ill-health she could not contact her counsel and prepare the written statement in time. She has a good case on merits. In this regard, defendant no.1 prays as above.

3. The plaintiff filed objection to the application. The plaintiff contended that there are no grounds made out to allow the application. In the present case defendant no.1 appeared through her counsel. Subsequently, she did not prefer to file the written statement inspite of giving sufficient opportunity. The defendant or her counsel were never present before the court. This court provided sufficient opportunity to defendant no.1 to contest the suit. Now the matter has been posted for arguments. The defendant did not choose to argue the matter. When the

opportunity was given to the defendants to address arguments, at the fag end of the proceedings the present application has been filed to drag the proceeding. With the written statement the defendant did not file any documents. The court may presume that the defendants are playing with the court as well as with the plaintiff. In this regard, the plaintiff prays to reject the application.

4. Heard both the counsel.

5. Considering the contentions of both counsels, the following points arise for my consideration.

1. Whether defendant no.1 has made out a case for permitting her to file the written statement?
2. What order?

6. 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

7. **Point No.1:-** It is the case of defendant no.1 that due to non-

availability of documents and ill-health she could not contact her counsel and prepare the written statement in time. In this regard, I have perused the order sheet, wherein it is clear that the written statement of the defendant was taken as not filed on 25.11.2019 and the present application came to be filed on 09.03.2022. Considering the same, I am of the view that there is a delay in filing the written statement by the defendant.

8. Considering the application on hand and the objections, I am of the view that the right of the defendant to put forth her defence cannot be curtailed, as the same amounts to curtailing the rights of the defendant to defend her case. Considering the application and the objections 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.

9. On perusal of the application, it reflects that due to non-availability of documents and ill-health the defendant could not contact her advocate and prepare the written statement. As such,

the defendant could not file the written statement in time. Having regard to the delay occurred in filing the written statement, I am satisfied with the reasons made out by the defendant in not filing the written statement within the stipulated time period. The plaintiff contend that the reasons for delay in filing the written statement is not true. No grounds have been made to allow the application. In spite of giving sufficient time, the defendant did not file the written statement. 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, the contentions of the plaintiff are of no avail to him.

10. It is to be considered that if the present application is not allowed the defendant cannot put forth her defence and hence the inconvenience which may be caused to her 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.

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

ORDER

**IA No.8 filed U/sec.151 of CPC filed by
defendant no.1 is hereby allowed on cost of
Rs.1000/-.**

(Dictated to the Typist directly on the computer, typed by her, corrected by me and then pronounced in the open court on this the **26th day of May, 2022.**)

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