

**IN THE COURT OF THE ADDL.CIVIL JUDGE & JMFC,
HOSANAGARA.**

DATED THIS THE 24th DAY OF JUNE, 2020.

**PRESENT:- DESHABHUSHAN KOUJALAGI,
Addl. Civil Judge and JMFC, Hosanagara.**

OS. No.118/2017

**BETWEEN : 01. SRI. SURESHA
S/O B. SWAMY RAO,
Age: About 46 years,
Occu: Agriculturist,
R/o Sonale Village,
Humcha Hobli,
Hosanagara Taluk.**

...DEFENDANT NO.3/APPLICANT

(By: Sri. Vijay Holegadde, Advocate)

**AND : 01. SMT. SHARADAMMA S.V.
W/O LATE. DAYANANDA A.N.,
D/O LATE V. KRISHNAPPA,
Age: About 61 years,
Occu: Agriculturist,
R/o Salageri Village,
Kasaba Hobli,
Hosanagara Taluk.**

...PLAINTIFF/OPPONENT

(By: Sri. B.S. Vinayaka, Advocate)

**COMMON ORDER ON APPLICATION FILED UNDER
SECTION 151 OF CPC FOR RE-OPENING THE STAGE OF THE
SUIT AND ANOTHER APPLICATION UNDER SECTION 151 OF
CPC TO CONDONE THE DELAY IN FILING THE WRITTEN
STATEMENT BY THE DEFENDANT NO.3 DATED 17.10.2019.**

The instant applications are filed by the defendant No.3 to re-open the stage of the suit from judgment to the stage of filing of written statement and to condone delay in filing the written statement by him.

02. The defendant No.3 has sworn to two affidavits filed in support of instant applications and in both the affidavits, the defendant No.3 has taken similar contentions. It is deposed by the defendant No.3 in the said affidavits that, suit summons has been duly served on him, he has appeared through his counsel and this Court has fixed time to him to file written statement. However, he could not file the written statement within stipulated period due to non-availability of some important documents. It is further deposed that, non-availability of necessary documents constrained him to submit applications to concerned offices to get those documents and the said act has caused delay in filing the written statement. It is further deposed that, he has a prima-facie case and it is very much necessary to prove his case by filing written statement. Non-filing of written statement in time is neither intentional one nor deliberate one but the same is caused due to aforesaid bonafide reasons and as such, he has filed instant applications. It is further deposed that, if the instant applications are not allowed, he would be put to irreparable loss and hardship and on the contrary, no loss or hardship would be caused to the plaintiff by allowing the instant applications.

With the above grounds, the defendant No.3 prays to allow the instant applications.

03. Against to the instant applications, the plaintiff has filed common written objections wherein she has contended that, the defendant No.3 has sworn to a false affidavit only with an intention to protract the proceedings of the suit and the same is not maintainable. It is further contended that, the present suit is for the relief of partition and the same has been filed two years back and inspite of the same , the defendant No.3 has not filed his written statement and in the instant applications, he has not assigned any cogent reasons for non-filing of written statement. It is further contended that, the plaintiff's side evidence has already completed and the matter was posted for judgment on 25.10.2019. Hence, when the matter is posted for judgment, Court cannot entertain the applications of the defendant No.3. It is further contended that, since, the defendant No.3 has not made out any cogent grounds to allow the instant applications, the same are deserves to be rejected.

04. Heard on both sides. Perused the entire materials available on record.

05. Under the above circumstances, the following points arise for the consideration of the Court:

POINT NO.1: Whether defendant No.3 has made out good grounds to allow the instant application?

POINT NO.2: What Order?

06. Findings of the Court on the above points are as under:

POINT NO.1: In the Affirmative.

POINT NO.2: As per final order for the following:

:REASONS:

07. **POINT NO.1:** The plaintiff has filed the present suit for the relief of declaration of title over the suit schedule properties and consequential relief of permanent injunction. In addition to the said reliefs, the plaintiff has also sought alternative relief of partition and separate possession of her half share in the suit schedule properties and for permanent injunction in respect of suit schedule properties.

08. It is admitted fact that, suit summons has been duly served on defendant No.3 and he has appeared through his counsel on 25.10.2017 and sought time to submit written statement and objections to IA No.I. It is to be noted that, the defendant No.1 and 4 have also engaged same counsel and they too sought time to file written statement. Thereafter, the defendant No.1, 3 and 4 have failed to file their written statement within stipulated period and as such, the written statement was taken as not filed on 11.12.2017. From 11.12.2017, the matter was adjourned for appearance of defendant No.2 on many occasions and

finally on 11.09.2018, the defendant No.2 placed exparte since she did not appear before the Court inspite of due service of suit summons. Thereafter, the matter has been posted for plaintiff's evidence and on 17.06.2019, the plaintiff through her SPA holder has got examined as PW1 and documents at Ex.P1 to P10 were marked and the matter was posted for further chief-examination of PW1. Thereafter, on 13.09.2019, the further chief-examination of PW1 was closed and the matter was posted for arguments. On 23.09.2019 arguments were heard on the side of plaintiff and the matter was posted for judgment on 25.10.2019 since none of the defendants had contested the suit. Hence, in the intermediate period of 11.12.2017 to 13.09.2019, the defendant No.3 could have taken necessary steps to file the written statement and he could have contested the suit. Instead of doing so, on 18.10.2019, the defendant No.3 by advancing the matter, the instant applications have been filed and sought to re-open the stage and to condone the delay in filing the written statement. Under the above circumstances, a question would arise as to whether at the stage of judgment, the defendant No.3 could be given an opportunity to contest the suit by reopening the stage and by condoling the delay in filing the written statement.

09. During the course of arguments, the learned counsel for the plaintiff has argued that, once the matter is reserved for judgment, no applications can be entertained by the Court except to deliver the judgment. In support of said arguments, the learned counsel for the plaintiff has relied on the judgment of our Hon'ble High Court of

Karnataka rendered in ***Rabiya Bi Kassim M. V/s. The Country Wide Consumer Financial Service Ltd.***, reported in ***ILR 2004 KAR 2215***. On the other hand, the learned counsel for the defendant No.3 has argued that, some litigations were pending before the Land Tribunal Hosanagara in respect of suit Sy.No.16, 17 and 18 of Salageri Village of Hosanagara Taluka and the documents pertaining to the Land Tribunal cases have not been traced out by the defendant No.3 which were very much necessary to file written statement and as such, the defendant No.3 could not file written statement in time. In reply to the said arguments, the learned counsel for the plaintiff has submitted that, the defendant No.3 has not specifically contended in his affidavits as to which documents he was tracing out and for which office he has submitted application to obtain the documents and in absence of those details, the instant applications are not maintainable.

10. There is no doubt that, when the matter was reserved for judgment, the instant applications have been filed by the defendant No.3 to reopen the stage and to condone delay in filing the written statement. By overruling all previous dictum, the Hon'ble High Court of Karnataka in Rabiya Bi Kassim M. case (supra) has held that, once the matter was posted for judgment, nothing could be done in the suit except to pass the judgment. This Court is of full agreement with the dictum laid down by the Hon'ble High Court of Karnataka in the aforesaid case. However, with due respect, this Court opines that, the facts involved in the judgment cited above are not similar to the facts of this case. In Rabiya Bi Kassim M. case (supra), the defendant therein has contested the suit by filing

written statement. However, in the present suit, even though the defendant No.3 has appeared through his counsel but he has not filed written statement and not contested the suit either by cross examining the PW1 or by subjecting himself for cross-examination. Hence, the set of facts of this case is not similar to the facts involved in the judgment stated supra. The defendant has not filed written statement in the present suit and if the instant application is not allowed, the same would results into multiplicity of cases and it would cast unnecessary burden on the parties to the suit. On the other hand, if the applications are allowed by compensating the plaintiff, the same would provide an opportunity to the defendant No.3 to prove his case and he cannot be left with unheard.

11. At this stage, Court opines to quote the judgment of Hon'ble Supreme Court of India rendered in ***K.K. Velusamy V/s. N. Palaanisamy*** reported in ***2011 (2)AIR KARR752***. In the said judgment, the Hon'ble Supreme Court of India has observed as under;

“13. The learned counsel for respondent contended that once arguments are commenced, there could be no re-opening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice

require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extra-ordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments”.

Even though in the present case, the defendant No.3 has not filed application to recall any witnesses or to lead evidence when the matter reserved for judgment but, he has filed instant applications wherein he has sought permission to contest the suit by filing written statement. In the aforesaid judgment, the Hon'ble Supreme Court of India has held that, to meet the ends of justice, an application could be entertained by the Court to reopen the stage even when the matter is reserved for judgment. It has further held that, non-entertaining the application when the case is reserved for judgment is not a straitjacket formula but, it can to be entertained if the facts warrants to achieve the ends of justice. Admittedly, in the present suit, the defendant has not filed any application to recall any witnesses or to examine himself to fill up any lacuna in his case but, he is seeking to contest the suit. Hence, even if the instant applications are

allowed, the plaintiff would get every opportunity to disprove the case of the defendant No.3 and the same would not take away any benefit gained by the plaintiff because of failure of the defendants to contest the suit. Moreover, it enables the Court for effectual determination of lis between the parties.

12. Even though the amended CPC has fixed statutory period of maximum 90 days to file written statement but in extra-ordinary circumstances and to meet the ends of justice, the written statement can be taken on record even beyond the period of 90 days from the date of service of suit summons. The Hon'ble Apex Court in ***Salem Advocate Bar Assn. V/s. Union of India***, reported in (2005) 6 SCC 344 has held that,

“21. In construing this provision, support can also be had from Order 8 Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the court, the court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to the suit as it thinks fit. In the context of the provision, despite use of the word “shall”, the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if the written statement is not filed and instead pass such order as it may think fit in

relation to the suit. In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 Order 8, the court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to “make such order in relation to the suit as it thinks fit”. Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1.”

If the defendant No.3 is not allowed to file written statement, the same would amount to denial of an opportunity. Even though it cannot be ruled out that, the defendant No.3 has filed instant applications at highly belated stage but, none of the defendants other than the defendant No.3 have chosen to contest the suit and as such, the rejections of the applications would may results into multiplicity of cases. Having regard to all these aspects, Court opines that, the instant applications are deserves to be allowed. At the same time, Court inclines to state that, the plaintiff

must be compensated who has filed the present case in the year 2017 and passed across various stages of the suit till the judgment. With the aforesaid discussions, Point No.1 is answered in the **AFFIRMATIVE**.

13. **POINT NO.2:** In view of the findings on Point No.1, Court proceeds to pass the following:

ORDER

The applications filed by the defendant No.3 under Section 151 of CPC are hereby allowed on cost of Rs.3,000/- each.

Delay in filing the written statement by the defendant No.3 is hereby condoned. The written statement which is submitted by the defendant No.3 to the Court on 18.10.2019 is taken on record by reopening the stage of the suit.

(Dictated to the Stenographer directly on computer, computerized by her corrected and then pronounced by me in the Open Court on this the 24th DAY OF JUNE, 2020.)

(Deshabhushan Koujalagi)
Addl. C.J. & JMFC, Hosanagara