

ORDER

This is an I.A. filed by the applicant/defendant U/s 151 of CPC prayed condone the delay in filing written statement.

2. The applicant/defendant sworn to an affidavit filed in support of his application stated that, though, earlier an opportunity was given to him to file written statement, but he had not filed his written statement because he had been to Bengaluru to do labour work and was unable to communicate with his counsel. Very recently he came to know about the matter, and instructed his counsel to file his written statement. With these averments the applicant/defendant sought for allowing the application.

3. The Opponent/plaintiff has filed his objection through his counsel wherein he has contended that the suit is for specific performance of contract and presently the matter is posted for judgment and the application is not maintainable at this stage and also contended that, if the application is allowed. The plaintiff will be put to great hardship, injury and injustice. Hence the opponent/plaintiff sought for rejection of I.A. filed U/s 151 of CPC.

4. On perusal of the materials on record and for the reasons stated in the affidavit, it is proved that the plaintiff has filed this suit for specific performance of contract. The defendant appeared in the case but has not filed his written statement, now the case is posted for judgment. At this stage the defendant came forward to file his written statement. It is highly belated stage of the case to file written statement. The Hon'ble Supreme Court in the case of K.K.Veluswamy Vs. N.Palaniswamy reported in 2011(2) AIR KAR R 752 has held that in exceptional and extraordinary circumstances and to meet the ends of justice and to prevent abuse of process of court it would also be open for the court to recall the order and consider the matter after it has been posted for judgment.

5. In the present case though the defendant has filed his written statement in a highly belated stage of the case that is at the time of judgment ,by following the judgment of the Supreme Court and in order to provide an opportunity to the party to prove his case, it is necessary to set aside the order passed as written statement of the defendant not filed. For these reasons I am of the opinion that an opportunity should be given to the defendant to file

his written statement in the interest of justice.

Hence I proceed to pass the following ;

Order

I.A. filed U/s 151 of CPC is hereby
allowed on cost of Rs.1,000/-.

The written statement of the
defendant is taken on record.

(Smt. Geeta)

Addl. Civil Judge & JMFC.,
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