

**05/01/2023**

Case called out

Pltf. by JDB

D1 to 5, 7 to 11,

13, 15, 17 & 20 by MG

D6, 12, 14, 16, 18 & 19 – Exparte

For Order

**COMMON ORDER ON I.A.NO.II AND III**

The counsel for the Applicant/defendants No.11 has filed these applications under Section 151 and U/Order 8 Rule 1 C.P.C. R/w Sec.5 of Limitation Act praying to set aside the order passed on 4-7-2022 and permit to file the written statement by condoning delay.

**2.** In the accompanying affidavits it is contended that, he had suffering from ill-health, he could not instruct his advocate regarding filing of written statement, his absence is neither willful nor negligent but due to his ill-health. Hence prayed to allow the applications.

**3.** On the other hand, the counsel for the plaintiff has filed objection to the I.A. contending that, no grounds are made out by the defendant No.11 and adoptive defendants to receive their written statement filed after enormous delay of more than 180 days. The grounds urged in the affidavit are concocted without supported by any medical certificate. The suit has reached the stage of trial. The defendants filed the written statement after lapse of 90 days from the service of summons. They purposely not filed written statement within prescribed time. Hence for

these amongst the other grounds he prayed to reject the applications.

4. Heard the counsels appearing for the parties. Perused the I.As, affidavits and objection.

5. Under the circumstances, following point arises for my consideration:-

***“Whether the applicant/defendant No.11 has made out sufficient grounds to set aside the Order of written statement not filed against him and other defendants?”***

6. The point framed for consideration is answered in the affirmative, for the following;-

### **REASONS**

7. Plaintiff has filed this suit for delivery of vacant possession of the suit schedule ‘A’ property. After service of summons the defendants No.1 to 5, 7 to 11, 13, 15, 17 and 20 appeared through their counsel but not filed written statement even sufficient opportunity given to them. Hence this Court has taken their written statement as not filed on 30-05-2022. Now the defendant No.11 filed the written statement along with the instant I.A.s and the

other defendants mentioned above filed memo to adopt the written statement filed by him. It is pertinent to note here that the case is posted for cross-examination of PW1, at this stage he come up with these applications as rightly contended by the plaintiff.

**8.** At this juncture it is just and necessary to give an opportunity to the defendant No.11 to contest the case to meet the ends of justice and for final adjudication of the matter. However the plaintiff has ample opportunity to cross-examine the defendants in the trial of the case. Hence it is significant to note here that, an opportunity to be given to defendant No.11 and other defendants mentioned above is necessary to avoid multiplicity of proceedings and to minimize the litigation. Hence, the Point framed for consideration is answered in the **Affirmative** by imposing cost and I proceed to pass the following:

**ORDER**

***Applications filed by the applicant/ defendant No.11 under Section 151 and U/Order VIII Rule 1 of C.P.C. R/w Sec.5 of Limitation Act is hereby allowed on imposing***

***separate cost of Rs.2,000/- for defendant No.11 and cost of Rs.500/- each to defendants No.1 to 5, 7 to 10, 13, 15 to 17 and 20.***

***Consequently, the order passed against above said defendants in respect of written statement not filed is set aside and the written statement of defendant No.11 is taken on record and the memo filed by other defendants to adopt the written statement of defendant No.11 is also taken on record subject to payment of cost.***

***For issues, Call on 30/01/2023.***

Sd/-

Prl. Civil Judge and  
JMFC, Bhatkal