

KAUK620017072021



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

Dated this 25th day of November, 2023.

-:PRESENT:-

Sri. IRANNA HUNASHIAKTTI B.COM., LL.B.
Addl. Civil Judge & JMFC.,
Honnavar.

Original Suit No.86/2021

Plaintiff/s : Smt. Jessy Kom Alocius Fernandes.

V/s.

Defendant/s : The brothers of Holy Cross and others.

IA No. III

Applicant/s : The brothers of Holy Cross and others.
(Defendant No.1 to 5 & 9)

V/s

Opponent/s : Smt. Jessy Kom Alocius Fernandes.
Plaintiff/s

* * *

ORDERS ON I.A. No. III

The applicants/defendants filed IA No.III Under order VIII Rule 1 R/w Sec 151 of CPC, for seeking permission of the Court to file their written statement.

2. The said application filed by accompanying affidavit and thereby they stated that, service of summons of this suit was served to one brother by name Ghnanashekaran who was working

as director of Jeevan Jyoti I.T.I, and he is a Tamilian not knowing Kannada language and such as it was difficult him to collect the necessary documents required to defend the case. Further sated that, within a short time he was transferred and another brother by name Nelson assumed the office as a director of the Jeevan Jyoti I.T.I. He was able to secure necessary documents but said documents were misplaced and lost. Afterwards he have been appointed to said office. Therefore they could not file their written statement due to non-availability of documents. The defendants have stated that the written statement could not be filed within the prescribed period for bonafide reason. If the application is allowed no harm will be caused to other side. Hence, prays to allow the application.

3. The counsel for plaintiff filed objection by denying averments of the said application and stated that, the application filed by the defendants is not maintainable either in law or on facts. It is further submits that, there is delay of 660 days. The plaintiff has further stated that, the applicants have not stated the proper and sufficient reasons to condone the delay. The reasons assigned in the application is not proper one. Hence, prays to dismiss the application.

4. Heard hearing on IA No.III by both sides.

5. The points that arise for my consideration are;

1. Whether IA No. III filed by the applicants/defendants U/o VIII Rule 1 R/w sec 151 of CPC is deserved to be allowed?

2. What order?

6. Perused the entire materials available on record. Answers to the above points are as hereunder:

Point No.1 : In the **Affirmative**.

Point No.2 : As per the final order,
for the following;

:-REASONS:-

7. **Point No.1** :- The plaintiff has filed the suit for the relief of permanent injunction in respect of the suit schedule property. The applicants/defendants filed IA No. III for seeking permission of the Court to file their written statement.

8. On careful perusal of the order sheet it appears that the present suit was filed on 03/07/2021. On calculation, the defendants have filed their written statement after lapse of 660 days.

9. The learned counsel for applicants/defendants submits that, they could not file their written statement within the stipulated period due to non-availability of the documents. Further submits that, if the application is allowed no injustice and harm would be caused other side. Hence, prays to allow the application.

10. The learned counsel for plaintiff submits that, the defendants are consuming the precious time of the Court by filing application at the belated stage. He has further contended that the defendants have not made out any case for allowing the application. The contention that the application is filed at belated stage cannot be sustained looking into the contents of the affidavit

filed by the defendants. If the application is allowed the plaintiff will be caused irreparable loss and injury. Hence, prays to dismiss the application.

11. In Atcom Technologies Limited vs Y.A.Chunawala and company and others, reported in (2018) 6 SCC 639, the Hon'ble Supreme Court of India has held as follows,

“19. It has to be borne in mind that as per the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908, the defendant is obligated to present a written statement of his defence within thirty days from the date of service of summons. Proviso thereto enables the Court to extend the period up to ninety days from the date of service of summons for sufficient reasons. Order 8 Rule 1 of the Code of Civil Procedure, 1908 reads as under:

“1. Written statement.—The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

20. This provision has come up for interpretation before this Court in number of cases. No doubt, the words “shall not be later than ninety days” do not take away the power of the court to accept written statement beyond that time and it is also held that the nature of the provision is procedural and it is not a part of substantive law. At the same time,

this Court has also mandated that time can be extended only in exceptionally hard cases.

We would like to reproduce the following discussion from Salem Advocate Bar Assn. (2) v. Union of India [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344] : (SCC p. 364, para 21)

“21. ... 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.”

21. In such a situation, onus upon the defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within thirty days. When that is a requirement, could it be a ground to condone delay of more than 5 years even when it is calculated from the year 2009, only because of the reason that writ of summons was not served till 2009?

22. We fail to persuade ourselves with this kind of reasoning given by the High Court in condoning the delay, thereby disregarding the provisions of Order 8 Rule 1 of the Code of Civil Procedure,

1908 and the spirit behind it. This reason of the High Court that delay was condoned “by balancing the rights and equities” is far-fetched and, in the process, abnormal delay in filing the written statement is condoned without addressing the relevant factor viz. whether the respondents had furnished proper and satisfactory explanation for such a delay. The approach of the High Court is clearly erroneous in law and cannot be countenanced. No doubt, the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 are procedural in nature and, therefore, handmaid of justice. However, that would not mean that the defendant has right to take as much time as he wants in filing the written statement, without giving convincing and cogent reasons for delay and the High Court has to condone it mechanically.”

12. So on perusal of the proviso to Order 8 Rule 1 CPC, it enables the Court to extend the period of 30 days prescribed under Rule 1 up to 90 days from date of service of summons for filing written statement for sufficient reasons. No doubt the words “shall not be later than ninety days” in the proviso to Order 8 Rule 1 do not take away the power of the Court to accept written statement beyond that time as the nature of the provision is procedural and directory and not a part of the substantial law. But time can be extended only in exceptionally hard cases. In such a situation, onus upon the defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within thirty days.

13. The time can be extended only in exceptional cases and 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.

14. On perusal contents of affidavit of IA No.III objection raised by the plaintiff, and also material available on the hand it reveals that, the application filed by the defendants is deserved to be allowed in order to avoid the multiplicity proceedings of the case and to decide the matter finally on merit with regard to subject matter of the suit between the parties. The amount of time and money spent by the plaintiff during the period when written statement was not filed, can be compensated by imposing necessary cost. Therefore, this Court is of the opinion that the defendant No.1/applicant has made out grounds to allow the application. Hence, point no.1 is answered in the **affirmative**.

15. Point No.2:- For the reasons discussed above, proceed to pass the following;

ORDER

IA No. III filed by applicants/ defendants Under order 8 Rule 1 R/w Sec 151 of CPC, is hereby allowed with cost of Rs.3,000/-.

The defendants are permitted to file their written statement.

The written statement of the defendants is taken on record, subject to payment of cost as noted above. The payment of cost is condition precedent.

(Typed by me in my laptop, corrected and signed by me and then pronounced in the open Court on this **25th day of November, 2023**).

(IRANNA HUNASHIKATTI)
Addl. Civil Judge & JMFC.,
Honnavar.

