

ORDERS ON I.A.NO.IV

The defendants have filed application under Order VIII Rule 9 r/w Sec.151 of C.P.C. praying this court to receive the additional written statement after condoning the delay.

Peruse the contents of affidavit, wherein it is stated that the case is posted for further cross of P.W.1 and at the time of filing the written statement, the defendants could not incorporate pleadings regarding the case of parties to the suit and also regarding non-maintainability of the suit and while preparing cross-examination he is being instructed by the party that the community to which the party belong is not entitled for partition and if such plea is not taken in the written statement the very purpose of filing the written statement would be defeated. Further the defendants submitted that the delay in filing the additional written statement is not intentional one, but due to the above mentioned reasons it could not be filed in time. So therefore prays to allow the application.

Further it is pertinent to mention here that other side has filed statement of objections and denied each and every averments of the petition. Further it is submitted that the defendants are going to take the contention that the suit is hit by Sec.2(2) of Hindu Succession Act, 1956 without any base. Since there is no amicable settlement between the parties the said suit for partition was being filed. So therefore prays to dismiss the application.

At this stage of discussion, this court likes to place reliance upon **Mr Glen Fredric Picardo vs Mr Rodney**

Picardo Since Deceased By Lrs. reported judgment of Hon'ble High Court of Karnataka wherein in this case, fact is that *“the petitioner had filed I.A.No.VII under Sec.151 of C.P.C. seeking leave of the court to file replication to the written statement filed by the legal representative of deceased and finally upon consideration it was rejected by the Trial Court and in this judgment the scope of order during Order VIII Rule 9 of C.P.C. is being elaborately explained and before the Hon'ble High Court of Karnataka it was argued that if there is set-off any counter claim then the defendant to be permitted to file the additional written statement by seeking the permission of the court. Further the Hon'ble High Court of Karnataka has explained Order VIII Rule 9 of C.P.C. and relevant paragraphs are explained for better appreciation”.*

Order VIII Rule 9 of C.P.C. defines as *“Subsequent pleadings - No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off (or counter-claim) shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same”.*

“A plain reading of Rule 9 under Order VIII does not provide for a reply by the plaintiff, subsequent to the

written statement of a defendant, other than by way of defence to a set-off or counter-claim, with the leave of the Court and upon such terms as the Court thinks fit. However, the said provision enables the Court to call upon a party to file a written statement or an additional written statement within a fixed time. If, in the written statement filed by the defendant there were to be a set-off or counter-claim, the plaintiff who stands in the position of a defendant insofar as the claim with regard to either the set-off or counter claim, is required to be granted leave to file a written statement. The intention of legislature in enacting Rule 9 is to meet the said situation and not to enable the plaintiff to file subsequent pleading by way of a replication”.

So by perusing the above said paragraphs it is crystal clear that the first defendant has to seek the permission of the court to file the additional written statement which is no doubt, it is being sought. On bear reading of order VIII Rule 9 it clearly states that no pleading subsequent to the written statement of a defendant, other than by way of defence to a set-off or counter-claim, shall be presented with the leave of the court and the court made to file such additional written statement. Hear in this case the defendant by virtue of filing this application intends to fill the lacuna in the

written statement which can be done by amending the written statement itself. Since there is no such plea like a set-off or counter-claim. Application on hand is devoid of merits. So therefore with this observation, this court proceeds to pass the following:

ORDER

The application filed under Order VIII Rule 9 r/w Sec.151 of C.P.C. filed by the defendant stands rejected.

However liberty is reserved for the defendant to amend his pleadings by filing the appropriate application.

Call for cross of P.W.2 by 13.02.2025.

Addl. Senior Civil Judge & A.C.J.M.
Udupi.