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ORDERS ON I.A.No.XIII

Plaintiffs lawyer filed the present application seeking an order for receive his rejoinder to the counter claim of the defendant No.12. Smt. VVR counsel filed objections to this application through the counsel of defendant No.12. Defendant No.12 contending that the plaintiff have not made out exceptional case for delay in filing rejoinder. There is no inherent power are jurisdiction to condone the delay to receive the rejoinder in the Sec. 151 of code of civil procedure. Advocate for D3 endorsed that he oppose the same in I.A. it self. Rest of the defendant lawyer were not opposed the I.A. The plaintiffs lawyer

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contending that Smt. VVR counsel was not filed vakalath for defendant No.12 by receiving no objection from the previous counsel. Smt. VVR counsel filed objection through the counsel of the defendant No.12.

The plaintiff must be given an opportunity to resist the counter claim of the defendant No.5 by filing rejoinder. If plaintiffs deprived of the opportunity of filing rejoinder it amounts to denial of the fair opportunity of contesting the case by the plaintiffs. The defendant No.12 opposing the application on the count that court has no inherent power to condone the delay to receive rejoinder U/Sec. 151 of Code of civil procedure.

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The plaintiffs are seeking to receive the rejoinder on record. It is needless to repeat that counter claim takes the role of plaint and the rejoinder take the role of written statement. The defendant No.12 filed counter claim on 11.10.2018. The plaintiff filed present application along with rejoinder on 03.04.2021. No doubt there is a inordinate delay in filing the rejoinder. The hardship caused to the defendant No.12 on account of delay in filing the rejoinder can be compensated by costs. Wrong quoting of the provision cannot used as tool for denial of the relief. The remedy claimed by the plaintiffs is very much clear in the application.

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Though the objection filed by the defendant No.12 is not in order the material available on record sufficiently explain that there is delay of 2 year 6 months in filing the rejoinder. At the same time one can ascertain from the material available on record that plaintiffs commenced evidence on 12.01.2023. There by rejoinder was very much available on record before commencing the plaintiff evidence but I.A. was not entertained till date. Thus, I pass the following -

ORDER

I.A.No.XIII filed by the plaintiffs U/Sec. 151 code of civil procedure 1908 stands allowed on cost

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of Rs. 2,500/-. Rejoinder filed by the plaintiffs received on record subject to payment of costs. The defendant No.12 only entitled to the receive the cost on payment by plaintiffs. Payment of costs by 17.06.2023.

Addl. Senior Civil Judge & ACJM,
Udupi.