

ORDERS ON I.A.No.VI

I.A.No.VI is filed under Section 151 of CPC by defendant No.4 to condone the delay in filing written statement.

2. In the affidavit annexed to the IA, the defendant No.4 has averred that the plaintiff had filed a Misc.Case No.18/2019 on the file of District Judge, Udupi seeking the transfer of another case pending before Additional Civil Judge. The said case is now transferred to this Court and renumbered as O.S.No.66/2020. All these developments had taken place during the Covid-19 period. As such, he could not file written statement on 06.09.2022. It is further submitted that by oversight and inadvertance instead of filing it in this suit, the written statement was filed in O.S.No. 66/2020. Only when the case was posted for cross-examination of P.W.1 the said mistake came to the knowledge of his counsel. Non filing of written statement till this date is not intentional or deliberate. Hence, it is prayed to allow the I.A.

3. Per contra the plaintiff has filed objection contending that the application is false, frivolous, vexatious and not maintainable either in law or on merit. There is no bonafide in the reasons set out and as such, prayed to dismiss the I.A.

4. Heard both sides.

5. The Civil Procedure Code prescribes 30 days as the period for filing written statement. However, up to 90 days upper limit, the delay in filing written statement can be condoned. Hon'ble Apex Court while interpreting the Provisions of Order VIII Rule 1 of CPC in *Salem Advocate Bar Association vs Union Of India* reported in **(2005) 6 SCC 344**, has held that in exceptional cases the Court may permit filing of written statement beyond the period of 90 days. Hence, considering the reasons set out in the IA, if opportunity is denied to the defendants to file their written statement, they will be put to hardship and irreparable loss. The inconvenience if any caused to the other side may be compensated by imposition of cost. Hence, I proceed to pass the following:-

ORDER

I.A.No.VI filed under Section 151 of CPC is hereby allowed on cost of Rs.200/-.

The written statement filed by the defendant No.4 is received on record.

There is no element of settlement as such compliance under Section 89 of CPC is dispensed with call on for Issues by: 07.07.2023

(Vignesh Kumar)

Prl. Sr. Civil Judge and CJM.,
Udupi.