

The defendant No.1 filed application under Sec.151 of C.P.C. prays the court to condone the delay in filing the written statement on the ground that she is an elderly women suffering from illness and as her children and defendant No.6 to 8 are residing at abroad was unable to provide necessary instructions to her counsel for preparation and filing of the written statement. Consequently, the written statement could not be filed within the stipulated plan.

The plaintiff counsel submits no objection.

The suit is one for partition and for separate possession. The defendant has not filed the written statement within the prescribed period. The present application was filed seeking condonation of delay of 220 days. The Order VIII Rule 1 of C.P.C. is directory and not mandatory. The court has discretionary to accept the written statement in appropriate cases in order to advance the substantial justice. **The Hon'ble Supreme Court in Salem Advocate Bar Association Vs. Union of India** has reiterated that procedural laws are hand maids of justice and should not be applied in a manner to defeat the substantive rights. Considering that the suit is one for partition, wherein

the rights of the parties are to be adjudicated on merits and in order to provide an opportunity to the defendants, to contest the matter, this court is of the opinion that the delay deserves to be condoned subject to payment of cost of Rs.1,000/- . Out of Rs.1,000/-, Rs.500/- is ordered to be deposited at DLSA and remaining Rs.500/- is payable to the plaintiff. Accordingly, the written statement is taken on record.

Prl.Sr. C.J. & CJM, Udupi