

IN THE COURT OF THE SENIOR CIVIL JUDGE AND ACJM,
KARKALA

Present: Smt.Sharmila C.S., B.A.L., LL.M.,
Senior Civil Judge and ACJM, Karkala.

Dated: This the 17th day of June , 2025.

O.S.No.67/2017

Smt. Rathnamma and others. ..Plaintiffs
Versus -
Sri. Namiraja Pandi and others ..Defendants

PARTIES TO I.A.NO.34

1. Smt. Vijaya,
Aged 55 years,
W/o. Late Shridhar Pandi,
2. Mrs. Shreesha,
Aged 36 years,
D/o. Late Shridhar Pandi,
3. Mr. Shrikanth,
Aged 32 years,
S/o. Late Shridhar Pandi,

No.1 to 3 are R/at. Aidhkolu House,
Irvathoor Village, Karkala Taluk,
Udupi District.

.. Applicants/
Defendant 2 to 4

- vs. -

1. Smt. Rathnamma
Aged 74 years,
W/o. Late Devaraj Jain,
R/at. Rajagiri House, Kanchana Village
and Post, Via Uppinangady,
Puttur Taluk, D.K. District.

2. Smt. Saraswathi,
Aged 71 years,
W/o. Prabhakara Athikari,
D/o. Jinnappa Hegde,
R/at. Shanthinilaya, Jayanthinagara,
6th Cross, Kukkundoor Village,
Karkala Taluk, Udupi District.
3. Mrs. Surekha V. Hegde,
Aged 46 years,
D/o. Late Sumanaji Amma,
W/o. Vijay Kumar Hegde,
R/at. Padmavarna, Post Kallabettu,
Gantalkatte, Moodabidri,
Mangalore Taluk, D.K. District.
4. Mrs. Sujatha Shivakumar,
Aged 40 years,
D/o. Late Sumajani Amma,
W/o. Shivakumar,
R/at. Kurpady House, Ajekar,
Marne Village, Karkala Taluk,
Udupi District.

.. Opponents/plaintiffs

i.	Provision under which the application is filed	Section 151 of CPC
ii.	Relief sought for	To receive written statement by condoning delay
iii	The date on which the application is filed	05-06-2025
iv	Number of the application	I.A.No.34
v	The date on which the objections are filed by different opponents	D.1: 10-06-2025 D.7: 11-06-2025
vi	The date on which the orders were passed on the said application.	17-06-2025

ORDER ON I.A.NO.34 FILED UNDER SECTION 151 OF
C.P.C.

Application is filed by defendants No.2 to 4 seeking condonation of delay in filing of the written statement.

2. The 2nd defendant has deposed that in view of talk of settlement between the parties, written statement could not be filed earlier and hence prays to allow the application.

3. Counsel for the defendant No.1 objects that the trial has already commenced and the written statement cannot be accepted after lapse of 8 years and thus prays to impose cost and condition while ordering.

4. Counsel for defendant No.7 also objects that the application is not maintainable and the written statement cannot be considered at this stage and prays to reject the application.

5. Heard from the counsels for the defendants No.1, 2 to 4 and 7.

6. The following point arise for my determination.

“Whether the delay in filing written statement can be condoned?”

7. My answer to the above point is in 'affirmative', for the following

REASONS

8. The present suit is for partition of the properties between the members of the family. Defendant No.2 to 4 have appeared through their counsel, but did not file any written statement. Now the evidence of the plaintiffs is completed and the evidence of 1st defendant is being recorded by appointment of court commissioner, as it is alleged that the 1st defendant is sitting in the wheel chair and unable to walk. Now at this stage of cross-examination of D.W.1, counsel for the defendants No.2 to 4 has filed the present application seeking to condone the delay in filing the written statement.

9. It is argued by the counsel for the defendants No.2 to 4 that there were elements of settlement, which was in the presence of this court. That the 2nd defendant is an age old lady and senior citizen . Thus with the intention of settling the matter, these defendants could not file the written statement.

10. As per the new amendment to Code of Civil Procedure, no written statement can be taken up after the period of 120 days. It is the bounden duty of the defendant to file the written statement within the stipulated period of 90 days. However, there are several authorities directing the trial court to take up the written statement, if proper reasons are assigned. The reason assigned by the defendant No.2 is of elements of settlement. It was also brought to the notice of this court that several other cases are pending before Moodabidri and other courts, where the parties are one and the same. Thus the urge of the 2nd defendant is that if the parties agreed to compromise, each and every matter will be settled. But this would not be sufficient reason for condonation of the delay in filing the written statement. Neither the fact that 2nd defendant is a woman and seniormost citizen does not hinder the 2nd defendant from filing the written statement that too for a period of nearly 8 years.

11. It was argued by the counsel for the defendant No.2 by referring to the order of this court, where several applications were filed seeking amendment and other applications, where the matter was posted for reporting the settlement, which went

nearly for a period of one year , and for the cross-examination of P.W.1, where P.W.1 was absent continuously etc, which do not support the claim of the 2nd defendant. Therefore, this court is of the considered opinion that the reason assigned by the 2nd defendant would not be proper one to condone the delay. However this court cannot also proceed without considering the objections of the defence of the 2nd defendant , which is against the principles of natural justice. The evidence of the plaintiff is also over and cross-examination of the defendant is being prolonged for absence of these parties. Thus, now if the written statement is taken on record, both the plaintiff and the 1st defendant needs to be recalled for cross-examination. It appears that the 2nd defendant is sailing with the plaintiff, in claiming the share. Only adhering to the principles of justice and in order to come to a proper conclusion , this court is of the considered opinion that the written statement should be taken on record. But there is heavy delay in filing of the application which is nearly for a period of 8 years. Considering the fact that this is one of the oldest matter pending before this court, and the hardship that is caused to

the parties, and in the interest of natural justice and equity only, the written statement filed by the defendant No.2 needs to be considered and the 2nd defendant needs to be saddled with cost. Therefore holding that the written statement of defendant No.2 needs to be taken on record by condoning the delay, the above point is answered in affirmative.

12. In view of the above reasoning, I proceed to pass the following :

ORDER

I.A.No. 34 filed by the defendants No.2 to 4 under Section 151 of C.P.C., is here with allowed with cost of Rs.7,000/-.

Delay in producing written statement is condoned.

Written statement of defendants No.2 to 4 is taken on record

(Dictated to the Stenographer, transcribed by her , transcript corrected and then pronounced in Open Court on this the 17th day of June, 2025.)

(SHARMILA C.S.)
Senior Civil Judge & ACJM, Karkala