

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 7th day of February, 2026.

O.S.No.56/2020

Jagadish Acharya ..Plaintiff

Versus -

Ramesh Acharya and others ..Defendants

PARTIES TO I.A.No.7

Sri. Udaya Acharya ..Applicant/
defendant No.5

- Vs -

Jagadish Acharya ..Opponent/plaintiff

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	11-12-2025
iv	Number of the application	I.A.No.12
v	The date on which the objections are filed by different opponents	16-12-2025
vi	The date on which the orders were passed on the said application.	07-02-2026

ORDER ON I.A.NO.12 FILED UNDER SECTION 151 OF

C.P.C.

Application is filed by defendants No.5 seeking
condonation of delay in filing of the written statement.

2. The defendant No.5 deposes that he had engaged one Mr. B. Sarvajna Tantri counsel to represent him in the above case, who failed to appear and file the written statement in time. Thus prays to allow the application.

3. Per contra counsel for the plaintiff objects that the suit was decreed against the 5th defendant, but was restored by the court. That though the 5th defendant put his appearance through the counsel, has deliberately delayed the matter and accordingly prays to reject the application.

4. Heard from the counsel for the plaintiffs and defendant No.5.

5. The following point arise for my determination.

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

6. My answer to the above point is in ‘affirmative’, for the following

REASONS

7. This is a suit for declaration and consequently for partition of the suit schedule properties. The suit was decreed.

However, vide order of this court dated 23-07-2000 in Miscellaneous Case No.6/2021, the suit was restored and the plaintiff was directed to lead evidence. In the meantime, on receiving the summons, defendant No.5 appeared through the counsel. However on 01-12-2025, Sri. I.R.Ballal, counsel with no objection from the previous counsel Sri.B. Sarvajna Tantri, filed vakalath for defendant No.5 and on 11-12-2025 has filed the present application along with the written statement.

8. This application was much seriously objected by the counsel for the plaintiff that the defendants are delaying the matter in order to grab the property. It was also argued that this court is providing unnecessary opportunity to the defendants. However the court has to proceed with the principles of the natural justice, where an opportunity has to be provided to the parties to submit their proper defence. Thus the intention/motive behind such a delay has to be seen, where the deliberate actions of the parties cannot be condoned.

9. Defendant No.5 deposes that his counsel Sri. B. Sarvajna Tantri did not appear before the court nor has filed the written statement even prior to the restoration of the suit.

This fact also has been urged by the defendant No.7, who filed the petition seeking restoration of the original suit. This court has already condoned and considered the written statement of defendant No.7 by restoring the original suit. The parties should not be condemned because of the mistake of the counsel. However the other circumstances, such as the parties might not be able to contact their counsel in time, also can be the reason for non-filing of the written statement in time. The parties always cannot blame their counsels. Therefore, at this stage, the court is of the considered opinion that only in the interest of justice and equity, the written statement of defendant No.5 needs to be considered.

10. At this stage the counsel for the plaintiff relies upon the authority of Hon'ble Supreme Court reported in

ILR 2004 KARNATAKA 1399 in 'A. Sathyapal and others Vs. Smt. Yasmin Banu Ansari and another,' where it is held that

"The defendant has to file the written statement within 30 days from the date of service of summons upon him. He can be allowed by the court to file his written statement beyond the

said period of 30 days, the reasons that the court must record in writing.”

It is further held that

“After the period of 90 days, the defendant loses the right to file the written statement and the court has no power to grant time beyond 90 days for filing the written statement from the date of service of summons.”

11. On the other hand the counsel for the defendant No.5, also has relied upon the authority of Hon’ble Supreme Court of India in Appeal (Civil) No.2925/2007 in ‘M/s. R. J. Jadi and brothers and others Vs. Subhashchandra ‘ dated 10-07-2007, where it is observed as under

“It is true that the procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock-outs.”

12. This court has already restored the matter by permitting the 7th defendant to contest the suit. At this stage, the delay in filing of the written statement by the defendant No. 7 was condoned. The defendant No.5 also stands in the same

footage as that of defendant No.7. Thus at this stage when the defendant No.7 is provided with an opportunity to contest the suit by filing the written statement, defendant No.5 also has to be provided with the similar opportunity. However, by this delay, the plaintiff is really put to hardship and inconvenience. Hence the defendant No.5 needs to be saddled with some nominal cost for the hardship and inconvenience caused to the plaintiff. Accordingly holding that the delay in filing written statement can be condoned, the above point is answered in affirmative.

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

ORDER

I.A.No.12 filed by the defendant No.5 under Section 151 of C.P.C., is here with allowed with cost of Rs.5,000/- .

Delay in producing written statement is condoned.

Written statement of defendant No.5 is taken on record subject to payment of cost .

(Dictated to the stenographer, transcribed by her, corrected and then pronounced by me in Open Court on this the 7th day of February , 2026.)

(SHARMILA C.S.)

Senior Civil Judge & ACJM, Karkala