

COMMON ORDER ON IA No. XIII & XIV

I.A. No. XIII filed by the applicants/defendants No.2 to 5 under Order IX Rule 7 r/w 151 of Code of Civil Procedure, praying to set aside the exparte order passed against them.

I.A. No.XIV filed by the applicant/defendants No.1 to 5 under Section 151 of Code of Civil Procedure, praying to condone the delay and receive the written statement.

2. It is averred in the affidavit annexed to the application that, the defendant No.2 to 5 are brother and sisters. The defendant no.4 is suffering from ill health since last 3 to 4 months; due to ill health he could not attend the court. The absence of last hearing date was neither intentional nor deliberate. Hence, this application and accordingly, the applicant prayed to allow the same.

3. Per contra, the learned counsel appearing for the opponent/plaintiff filed objection and contended that, the instant applications are not maintainable in either in law or on facts and denied all the averments made in the said application. It is specifically contended that, there are no absolutely no grounds to set aside the ex-parte order against the defendants 2 to 5. The defendants are fully aware of the case and have deliberately not appeared before the court. The averments made in the affidavit are neither true nor correct and there is no justifiable cause or reason to allow the application. With these, the plaintiff has prayed to dismiss the applications with costs.

4. The points that arise for my consideration are as under:

1. Whether the applications are deserves to be allowed?
2. What order?

5. The learned counsel for the applicant/defendants No.1 to 5 B. Sadananda Salian and learned counsel for the opponent/plaintiff Sri. I. Rajkumar Ballal have been heard.

6. I have perused the applications and entire materials on record.

7. My findings are as under:

Point No.1: In the Affirmative

Point No.2: As per final order for the following:

REASONS

8. **Point No.1:** After hearing the arguments and careful perusal of the applications, affidavits, Objections and materials placed on record, it is specifically contended that, the applicant suffering ill health since last 3 to 4 months, due to ill health he could not appear in the court on the last hearings. The non-filing of written statement is neither intentional nor deliberate. On the other hand the learned counsel for the plaintiff contended that, there are absolute no grounds to set aside the ex-parte order against the applicants and they have fully aware of the case and deliberately not appeared before the court.

9. On perusal of the entire order sheet it reveals that, after service of summons the defendants were not

appeared. Hence, they were placed ex-parte. In mean time the applicants have appeared through their counsel and filed the present applications. The present suit filed by the plaintiff against the defendants for specific performance of the contract entered between them and rights of the parties are involved in respect of the immovable property and it is well-settled law that substantive rights of parties cannot be allowed to be defeated on technical ground. Hence, the reasons assigned by the applicants are justifiable and mere providing an opportunity to contest the suit by filing written statement, it will no way prejudice the case of the plaintiff. Hence, in view of above discussion and reasons, I am of opinion that it would serve ends of justice if an opportunity is provided to the defendant No.2 to 5, to file written statement. Accordingly, I answered **Point No.1 in Affirmative**.

10. **Point No.2:** In view of discussion and the findings arrived at point No.1, I proceed to pass the following:

ORDER

I.A. No.XIII filed by the applicant/defendant No.2 to 5 under Order IX Rule 7 r/w 151 of Code of Civil Procedure is allowed on cost of Rs.200/-.

I.A. No.XIV filed by the applicant/defendant No.1 to 5 under Section 151 of Code of Civil Procedure is allowed on cost of Rs.200/-.

II Addl. Civil Judge & J.M.F.C.,
Karkala.