

COMMON ORDER ON IA No. XV & XVI

I.A. No. XV filed by the applicants/defendants
No.7, 8 and10 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.XVI filed by the applicant/defendants No.6 to 8 & 10 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. 7, 8 and 10 are residing at Bengaluru for education and job purpose. Due to said reasons they could not attend the court. The absence of last hearing was neither intentional nor deliberate. As per their counsel advise, they have obtained some documents before revenue office and sub registrar office to prepare written statement. Hence, this application and accordingly, the applicant prayed to allow the same.

3. Per contra, the learned counsel appearing for the opponent/plaintiff filed common 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, the application are filed at belated stage. The amended code of civil procedure provides that the written statement has to be filed within 30 days from the date of the service of summons. If the court is satisfied to condone the delay, the defendants can place the written statement within 90 days. There are no convincing reasons which enable the court to extend the period beyond 90 days. The act of the applicants is deliberate and does not deserve the condonations claimed in 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 applicants/defendants No.6 to 8 and 10 Sri. Sudesh Shetty 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 applicants are residing at Bengaluru for education and job purpose. Due to said reasons they could not attend the court. The absence of last hearing was neither intentional nor deliberate. On the other hand the learned counsel for the plaintiff specifically contended that, there are no convincing reasons which are enable the court to extend the period beyond 90 days and they have fully aware of the case and deliberately not appeared before the court. At this juncture it is worth to refer a decision of the **Hon'ble Apex Court in the case of Zolba -V/s- Keshao & others (AIR 2008 SC 2099)** wherein held that:

In an adversarial system, no party should ordinarily be denied opportunity of participating in a process of justice dispensation. Therefore, unless compelled by express and specific language of the statute, the provisions of Order 8 rule 1 of CPC or any procedural enactment should not be construed in a manner, which would leave the court helpless to meet extraordinary situations in the ends of justice.

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.XV filed by the applicant/defendant No.7, 8 and 10 under Order IX Rule 7 r/w 151 of Code of Civil Procedure is allowed on cost of Rs.200/-.

I.A. No.XVI filed by the applicants/defendants No. 6 to 8 and 10

under Section 151 of Code of Civil
Procedure is allowed on cost of Rs.200/-.

For Compliance U/Sec.89 of C.P.C.

Call On:

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