

Orders on IA No. 8 filed under Sec.151 of CPC.,

The defendant has filed this application under section 151 of CPC seeking permission to file written statement after condoning the delay.

2. It is stated in the accompanying affidavit that due to his advanced age and illness he could not able to contact the advocate in time to file written statement. They have a good case on merits. It is just and necessary to allow the application. If the application is not allowed he will be put to irreparable loss and hardship. On the other hand if the application is allowed no prejudice will be caused to anyone. Hence prays to allow this application.

3. On the other hand the plaintiff has filed an objection to the above application contending that after receiving the suit summons the defendant filed his vakalath, thereafter did not turn up, the evidence was lead on behalf of the plaintiffs and the evidence of one witness is also lead. After hearing the evidence the case was posted for judgment, till then the defendants slept over the matter. The application is filed at the belated stage. If the application is not allowed no harm will be caused to the defendant. On the other hand at this belated stage, if the application is allowed the plaintiffs would be put to irreparable loss and hardship. Apart of this as the case is posted for judgment, it cannot be reopened for any purposes. Hence prays to reject the application with cost.

4. Heard both side and perused the materials on record.

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

//POINTS//

1) Whether the defendant has made out grounds to allow application ?

2) What order?

6. My answer to the above point is in the **AFFIRMATIVE** for the following:

// REASONS //

7. The plaintiff has filed this suit against the defendants for the relief of declaration and permanent injunction. After service of summons the defendants have appeared before the Court through their counsel but they have not filed the written statement. The plaintiff has examined as PW1 and got marked the documents as per Ex P 1 to 12. One witness was examined as PW2. Then the matter was posted for the arguments. At that stage the present application was filed. The defendant stated that due to advanced age and ill health he could not file the written statement within the time. On the other hand the plaintiff stated that the application was filed at the belated stage and the case cannot be reopened when the matter is posted for judgment. Ordersheet shows that the suit was not posted for the judgment. The application was filed when the case is

stands for arguments. It is true that there is a delay of more than 2 years and the application has been filed at the belated stage, but that is not a ground for rejection of the application. The delay may be compensated by way of cost. Considering the facts and circumstances of the case this Court of the opinion that in order to provide one more opportunity to the parties to prove their respective cases, it is necessary to allow the application in the interest of justice. Accordingly I proceed to pass the following:

ORDER

The IA No. 8 filed Under Section 151 of CPC., is hereby allowed on cost of Rs. 1500/-.

The written statement is taken on record subject to payment of cost

Call on 2-07-2024.

(Smt. Rohini.D)
II Addl. Civil Judge and J.M.F.C.,
Kundapura