

Orders on IA No. 4 filed under Order VIII Rule 10 R/w
Section 151 of CPC.,

The defendant has filed this application under Order 8 Rule 10 R/w Section 151 of CPC seeking permission to file written statement after condoning the delay.

2. It is stated in the affidavit that the defendant No. 1 could not collect necessary documents to prepare the written statement. He has collected those documents and instructed his advocate to prepare the written statement and the same is filed in the above suit. The delay in filing the written statement is not intentional. He has a good case to contest. If the written statement is not accepted he will be put to great loss. Hence prays to allow the application.

3. The plaintiff has submitted objection to the above application and contended that the application to condone the delay in filing the written statement or to receive the same is not maintainable either under law or on facts. The allegations that the applicant could not collect necessary documents to prepare the WS are all false. The defendant has not filed the WS, the same was taken as nil and accordingly evidence was lead. Till then the defendant slept over the matter. The only document referred to in the suit is the Partition Deed, to which the applicant is a party and he possesses the original. Except this document, there are no other documents. If the WS is not allowed at this belated stage, no harm would be caused to the defendant. On the other hand if such a belated application is allowed at this stage, certainly the plaintiff would be put to irreparable hardship and loss. Hence prays to dismiss the application.

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 the grounds to allow the applications ?

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 permanent injunction with respect to suit 'A' schedule properties. After service of summons the defendants have appeared before the Court through their counsel. They have not filed written statement with in the stipulated period. Hence the case was posted for plaintiff Evidence. At that stage the present application was filed on the ground that due to collection of documents he could not file the written statement with in time. On the other hand the plaintiff stated that the application was filed at the belated stage with out any sufficient reasons.

8. The ordersheet shows that there is a delay of one year in filing the written statement, that itself is not enough to reject the application. The delay may be compensated by way of cost. The evidence is not yet commenced. Considering the facts and circumstances of the case this Court is of the opinion that in order to provide one more opportunity to the defendant to prove his respective case it is necessary to allow the application in the interest

of justice by imposing cost to compensate other party for delay.
Accordingly, I proceed to pass the following:

ORDER

**The IA No. 4 filed by the
defendant under Order VIII Rule 10
R/w Section 151 of CPC is hereby
allowed on cost of Rs. 500/-.**

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

Call on 05-11-2024

II Addl. Civil Judge and J.M.F.C.,
Kundapura