

**IN THE COURT OF THE ITINERATING SENIOR CIVIL  
JUDGE AT HUVINAHADAGALI**

**OS No. 38/2023**

**Dated this the 24<sup>th</sup> day of January 2026**

**PRESENT**  
**MADHUSUDHANA D.K. B.A., LL.B.**  
Itinerary Senior Civil Judge  
Hoovinahadagali

***Plaintiff: Smt. S.M. Shashikala.***

***V/s***

***Defendants: Smt. Thotamma and Others***

**ORDERS ON IA NO.4 UNDER ORDER 8 RULE 9  
READ WITH SECTION 151 OF CPC**

LRs of the Defendant No. 1 and Defendants No. 3, 4, 7, 9 and 11 to 16 have filed the IA No. 4 dated 27.05.2024 by seeking Condoning of delay in filing their Written Statement.

2. In support of the IA No. 4, the Plaintiff No. 12 Sri.Sharan Kumar has filed Affidavit by deposing on Oath for himself and also on behalf of other Applicants. In brief, he has contended that, *this Case was Posted for filing of Written Statement of the above Defendants on 30.03.2024 but, the above Defendants could not approach their Advocate to give Instructions to file their Written Statement* and therefore, the Written Statement was taken as not filed. For these reasons, the above Defendants pray for allowing the IA No. 4.

3. The Plaintiff has filed her detailed Objections to the IA No. 4. In brief, the Plaintiff has contended that, *on 01.06.2024, the Plaintiff has filed SPA before the Court and the Defendants have filed their Objections on 06.07.2024 and thereafter, the Defendants have changed their Advocate who filed NOC Vakalath on 06.06.2025.* Therefore, the Defendants having participated in the Proceedings could not contend about not giving Instructions to their Advocate. For these reasons, the Plaintiff prays for Dismissal of the IA No. 4.

4. I have heard arguments of Rival Parties and perused the Material placed on Record.

5. On appreciating the Material placed on Record, the Points that arise for My consideration are as follows:

**POINTS**

**1) Whether the Court could permit the Defendants to file their Written Statement beyond 120 Days even after the Amendment brought in the Year 2025?**

**2) What Order?**

6. Now, My answers to the above Points are as follows:

**ANSWERS**

**POINT NO.1: In the Negative**

**POINT NO.2: As per the final Order, for the following:**

**REASONS**

7. **POINT NO.1:** I have already narrated the facts leading up to filing of the above IA No.4 and therefore, it is needless to reiterate the same narration once again here.

8. The Amendment Act 40 of Code of Civil Procedure 2024 came into force on 19<sup>th</sup> May 2025 and the said Amendment reads as follows:

***4. Amendment of the First Schedule.-  
In the First Schedule to the  
Principal Act,- (i) in the Order V, in  
rule 1, in sub-rule (1), after the  
second proviso, the following  
proviso shall be inserted, namely:-***

***Provided also that where the  
defendant fails to file the Written  
Statement within the said period of  
thirty days, he shall be allowed to  
file the Written Statement on such  
other day, as may be specified by  
the Court, for reasons to be  
recorded in writing and on  
payment of such costs as the Court  
deems fit, but which shall not be  
later than one hundred twenty  
days from the date of service of  
summons and on expiry of one  
hundred twenty days from the date  
of service of summons, the  
defendant shall forfeit the right to  
file the Written Statement and the  
Court shall not allow the Written  
Statement to be taken on record.***

Therefore, by considering the fact that, the above Amendment came into force during May 2025 is applicable to the IA No.4 dated 25.07.2025 filed by the above Defendants. The Applicants have contended that, the Court has Posted the Case for filing their Written

Statement on 30.03.2024 and they are filing this IA No.4 on 25.07.2025, after expiry of more than 1 Year and 4 Months from the date fixed for filing of the Written Statement. Therefore, the reasons assigned in the Affidavit of the IA No. 4 about not able to contact the Advocate to give Instructions to file the Written Statement does not speak about any bonafide reasons in not filing the Written Statement of the Defendants. By way of the above Amendment, the Legislature has made it Mandatory for a Defendant to file his Written Statement within 120 days from the date of his appearance and the Court's Power to receive the Written Statement after expiry of 120 Days is deprived of by the above Amendment. Therefore, I am of the considered opinion that, the Court could not permit a Defendant to file his Written Statement beyond 120 Days against to the above Amendment and accordingly, ***I answer the Point No.1 in the Negative.***

9. ***POINT NO. 2:*** For the above discussion, I proceed to pass the following:

**ORDER**

***The IA No. 4 of the Defendants filed under Order 8, Rule 9 read with Section 151 of CPC is hereby Rejected as filed beyond 120 Days.***

***Posted for cross-examination of PW1 if any on 06.03.2026.***

**MADHUSUDHANA D K**

Itinerary Senior Civil Judge  
Hoovinahadagali