

IN THE COURT OF THE CIVIL JUDGE & JMFC, HARAPANAHALLI

Present: **SMT. B.G.SHOBA, M.A., LL.B.,**
Civil Judge & JMFC,
Harapanahalli.

Dated : This the day of 7th February 2019

O.S. NO.179/2015

Plaintiff/s : Kattimani @ Hadapada Gururaja & others
(Rept., by Sri. B.K.M., Advocate)

-Vs.-

Defendant/s: Hadapada Halappa and others
(Rept., by Sri. C.H.B., Advocate)

I.A. No.II

Applicant : Kattimani @ Hadapada Gururaja & others

-Vs.-

Opponent : Hadapada Halappa and others

ORDERS ON I.A.NO. II U/S. 151 OF CPC

I.A.No. II is filed by the plaintiff No.1 U/s.151 of CPC seeking permission to file written statement by condoning delay.

2. The application is accompanied with an affidavit sworn by the plaintiff No.1 wherein he stated that the counter claim has filed the above suit against him and other plaintiffs for declaration and permanent injunction. Due to his illhealth he could not approached

his advocate to instruct to prepare written statement. The delay in not filing of written statement was not intentional one but for the above reasons. He is filing his written statement by making an application to condone the delay. If the application is not allowed he will be put to heavy and irreparable loss and it will leads to multiplicity of proceedings. Hence prayed to allow the application.

3. The said application has been resisted by the defendants by filing objection wherein he denied he averments of affidavit sworn by the plaintiff No.1. Further contended that the written statement to counter claim filed by the plaintiff No.1 is not maintainable and it is barred by limitation. The counter claim properties are self acquired properties of this defendant. It was not purchased by plaintiff as stated by him. As such they have no right in said properties. After lapse of 3 years the plaintiff filed written statement to counter claim which is not maintainable under law. He is to explain delay of every day, he has not assigned reason for delay. Hence prayed to reject the application.

4. Heard the arguments. Perused the rival contention of the parties.

5. On the basis of the above facts, the following points that arise for my determination are:

1. Whether the plaintiff No.1 made out sufficient ground to allow the application ?

2. What order?

6. My answer to the above points is:

Point No.1 : In the Affirmative;

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

REASONS

7. **Point No.1:-** On perusal of contention urged by both parties it appears that the plaintiff filed this suit for the relief of partition and separate possession with respect to the suit schedule property. The present application is filed by the plaintiff No.1 seeking permission to file written statement to the counter claim by condoning delay. According to him due to his ill health he could not approached his counsel to instruct for preparing written statement. The delay for filing of written statement is not intentional. If he permitted to file written statement no prejudice would be caused to the defendants. According to the defendants the plaintiff No.1 has not assigned sufficient reason for condone delay. However the contention of the defendant is that the counter claim property is his self acquired property. The said contention cannot decided in this application. It is true that there is a morethan 2 years delay in filing

of written statement, but when the plaintiff No.1 come forward to resist the counter claim filed by the defendant one more opportunity has to be given to him. Moreover the trial was not yet commenced in this suit. If the plaintiff No.1 is permitted to file written statement no prejudice would be caused to the other side. Infact it will helpful to the court to adjudicate the matter effectively. The delay may be compensated by imposing reasonable costs. Therefore the application filed by the plaintiff No.1 deserves to be allowed. Accordingly point No.1 is answered in the **affirmative**.

8. Point No.2:- For the above discussion, I proceed to pass the following;

ORDER

I.A. No.II filed by the plaintiff No.1 U/s.151 of CPC is hereby allowed on payment of cost of Rs.1500/-.

Plaintiff No. 1 is permitted to file his written statement to counter claim.

*(Dictated to the stenographer directly on computer, revised, corrected and then pronounced by me in the open Court on this the **7th day of February, 2019**)*

(B.G.SHOBHA)
Civil Judge & JMFC.,
Harapanahalli.

(Order pronounced in the open court
vide separate)

ORDER

**I.A. No.II filed by the plaintiff
No.1 U/s.151 of CPC is hereby
allowed on payment of cost of
Rs.1500/-.**

**Plaintiff No. 1 is permitted to
file his written statement.**

Civil Judge & JMFC.,
Harapanahalli.