



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 4TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO.100806 OF 2026 (GM-RES)

BETWEEN:

MAHESH GANIGER
S/O. MALLIKARJUN GANIGER,
AGED ABOUT 32 YEARS,
OCC. AGRICULTURE,
RESIDING AT KOLIWAD,
HUBBALLI-581195.

...PETITIONER

(BY SRI. VINAYAK MEGUNDI, ADVOCATE)

AND:

1. SMT. KEERTHI TOTAD
W/O. SUNILKUMAR TOTAD,
AGED ABOUT 36 YEARS,
OCC. HOUSEWIFE,
RESIDING AT KOCHIGERI,
SHIRAHATTI, GADAG DISTRICT-582120.
2. PAVITRA TOTAD
W/O. RAVIKUMAR TOTAD,
RESIDING AT KOCHIGERI,
SHIRAHATTI, GADAG DISTRICT-582120.
3. ISHWARAPPA METI
S/O. BASAPPA METI,
AGED ABOUT 61 YEARS,
OCC. AGRICULTURE,
RESIDING AT KOLIWAD,





HUBBALLI TALUKA,
DHARWAD DIST-581195.

4. PRAVEEN METI
S/O. ISHWARAPPA METI,
AGED ABOUT 34 YEARS,
OCC. AGRICULTURE,
RESIDING AT KOLIWAD,
HUBBALLI TALUKA,
DHARWAD DIST-581195.

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA, A) ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER, OR DIRECTION QUASHING AND SETTING ASIDE THE ORDER DATED 03.01.2026 PASSED BY THE HON'BLE PRINCIPAL SENIOR CIVIL JUDGE, HUBBALLI IN O.S. NO.316/2025. (ANNEXURE-A) B) ISSUE A WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER, OR DIRECTION DIRECTING THE HON'BLE TRIAL COURT TO PERMIT THE PETITIONER TO FILE HIS WRITTEN STATEMENT IN O.S. NO.316/2025 AND TO TAKE THE SAME ON RECORD IN ACCORDANCE WITH LAW; C) GRANT SUCH OTHER AND FURTHER RELIEFS AS THIS HON'BLE COURT MAY DEEM FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



ORAL ORDER

The present writ petition is filed aggrieved by the order passed on IA in OS No.316/2025, dated 3.1.2026, by the Principal Senior Civil Judge, Hubballi, whereby the Court had dismissed the application seeking to condone the delay and to file written statement.

2. The respondent Nos.1 and 2 herein had filed a suit for partition. The petitioner/defendant No.3 had filed an application under Order VIII Rule 1 of CPC to condone the delay and to file the written statement. The Court had dismissed the same by order impugned dated 3.1.2026. While dismissing the said application, the Court had observed that the defendant No.3 had appeared before the Court on 01.08.2025 and the advocate for defendant filed an application seeking permission of the Court to file the written statement on 03.01.2026. The Court observed that the plain reading of Order VIII Rule 1 of the amended CPC says that, when the defendant fails to file the written statement, within a 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 the reasons to be recorded in writing and on payment of such costs, as the Court deems fit, but it shall not be later



than 120 days from the date of service of summons and on expiry of 120 days from the date of service of summons, the defendants shall be forfeited to file the written statement and the Court shall not allow the written statement to be taken on record. The Court had also observed that the amended proviso to Order VIII Rule 1 of CPC is not discretionary, but it is mandatory. The Court cannot permit to file the written statement in exercising the inherent powers after 120 days from the date of service of summons to the defendants. The Court had also observed that the discretionary power of the Court after 120 days is taken away by proviso to Order VIII Rule 1 of CPC. It is observed that when the law mandates the same, the Court should not allow the defendants to file the written statement.

3. Learned counsel appearing for the petitioner submits that unless the written statement is filed, it would cause lot of hardship to the petitioner/defendant No.3 and the litigation cannot be taken to any logical end and therefore, Court ought to have condoned the delay and permitted to file written statement.

4. Having heard the learned counsel for the petitioner, perused the material on record. The amended provision of Order VIII Rule 1 of CPC reads as under:



"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."

5. This amendment has come into force on 05.06.2025.

After the amendment, no discretion is left with the Court to condone the delay. The amended provision makes it clear that the Court shall not allow the written statement to be taken on record. The use of the word "shall" makes it very clear and the Court has no such discretion to take the written statement after 120 days. In that view of the matter, this Court does not find any reasons to interfere.

6. Accordingly, this Court is passing the following:

ORDER

- i) The present writ petition is ***dismissed***.
- ii) All I.As.in this writ petition shall stand closed.

Sd/-
JUSTICE LALITHA KANNEGANTI

JTR
List No.: 1 Sl No.: 35