



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 19<sup>TH</sup> DAY OF DECEMBER, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY**

**WRIT PETITION NO. 11556 OF 2022 (GM-CPC)**

**BETWEEN:**

SRI. GULLU G. TALREJA  
S/O GELERAM TALREJA  
AGED ABOUT 67 YEARS,  
NO.124, PEEBLEBAY APARTMENT,  
RMV II STAGE, BENGALURU - 560 094

...PETITIONER

(BY SRI. RAKESH BHAT, ADVOCATE)

**AND:**

1. SRI. SANJAY SISODIA  
S/O HASTIMAL SISODIA,  
AGED ABOUT 53 YEARS,  
NO.105, KUSHAL MANSION,  
C STREET, 6TH CROSS,  
GANDHINAGAR, BENGALURU - 560 009.

2. SPECIAL TAHSILDHAR  
BENGALURU NORTH TALUK,  
KANDAYA BHAVANA,  
K.G. ROAD, BENGALURU - 560 009.

...RESPONDENTS

(BY SRI. K.S. DEVARAJ, ADVOCATE FOR R1;  
SMT. RADHA RAMASWAMY, HCGP FOR R2)

Digitally  
signed by  
KAVYA R  
Location:  
High court  
of Karnataka



THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER PASSED BY THE LEARNED 4TH ADDL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, IN O.S.NO.391/2011 DTD 07.03.2022 PASSED ON I.A.9 VIDE ANNEX-G AND ETC.,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

**ORAL ORDER**

Plaintiff is before this Court in this writ petition filed under Article 227 of the Constitution of India with a prayer to set aside the order dated 07.03.2022 passed on I.A.No.9 in O.S.No.391/2011 by the Court of IV Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru.

2. Heard the learned counsel for the parties.

3. Petitioner has filed O.S.No.391/2011 before the Jurisdictional Civil Court seeking the relief of declaration and consequential relief of mandatory injunction and permanent injunction in respect to the suit schedule



properties. Defendant No.1 who had entered appearance in the said suit on 08.08.2011 had filed I.A.Nos.2 and 3 under Order VII Rule 11 of CPC and under Section 11 of CPC. Defendant No.2 has been placed *ex-parte* in the suit. Though defendant No.1 had filed I.A.Nos.2 and 3, he had not filed his written statement opposing the suit claim. After the suit was posted for passing *ex-parte* judgment, I.A.No.9 was filed on behalf of the defendant under Section 151 of CPC with a prayer to condone the delay in filing the written statement and receive his written statement. The said application was opposed by the plaintiff by filing detailed objection. The Trial Court vide the order impugned has allowed I.A.No.9 and being aggrieved by the same, plaintiff is before this Court.

4. Learned counsel for the petitioner having reiterated the grounds urged in the petition submits that absolutely no reasons is assigned in the affidavit filed in support of the application to condone the delay of more than ten years caused in filing the written statement.



Merely for the reason that applications filed by the defendant No.1 were pending, that itself will not save the limitation provided under the statute for filing the written statement. In the absence of any explanation offered by defendant No.1, the Trial Court was not justified in allowing I.A.No.9. Accordingly, he prays to allow the petition.

5. *Per contra*, learned counsel appearing for the contesting respondent/defendant No.1 has argued in support of the impugned order. He submits that I.A.No.2 and 3 filed on behalf of the defendant No.1 are pending consideration even as on the date. It is under the circumstances, the written statement was not filed. He submits that in W.P.No.24087/2012, which was disposed of on 02.03.2021, this Court has granted liberty to the parties to raise the contentions urged in the said writ petition before the Civil Court. Therefore, liberty was granted to the petitioner by this Court to file written statement in this suit. He refers to the judgment of the



Hon'ble Supreme Court in the case of **KAILASH VS. NANHKU AND OTHERS - 2005 SCC ONLINE SC 691** and submits that Limitation provided for filing written statement is only directory and not mandatory. If the defendant No.1 is not granted an opportunity to file his written statement, grave injustice would be caused. He has also referred to the judgment of the Hon'ble Supreme Court in the case of **C.N.RAMAPPA GOWDA VS. C.C.CHANDREGOWDA AND ANOTHER - (2012) 5 SCC 265** and submits that when there are disputed questions of law, the trial Court should not pass *ex-parte* judgment and decree. He submits that in the said case the High Court had therefore, set aside the *ex-parte* judgment and decree and had remitted the matter for fresh trial after giving an opportunity to the defendant to file written statement. He submits that even in this case there are disputed questions of facts and therefore, *ex-parte* judgment cannot be passed. Accordingly, he prays to allow this petition.



6. Suit in O.S.No.391/2011 is filed on 07.04.2011 seeking the relief of declaration of title and consequential reliefs of mandatory injunction and permanent injunction in respect to the suit schedule properties. In the said suit, defendant No.1 has entered appearance on 08.08.2011 and on the said day I.A.Nos.2 and 3 were filed on his behalf under Section 11 of CPC and under Order VII Rule 11(a) and (d) of CPC respectively. It appears that the said applications were not prosecuted by defendant No.1 and therefore, the Trial Court had posted the matter on 01.03.2013 to record plaintiff's evidence. Recording of plaintiff's evidence had commenced in the month of February, 2017 and it was closed on 07.12.2020. Thereafter, the matter was posted for passing judgment on 16.12.2020 and on 29.01.2021.

7. At this stage defendant No.1 had advanced the case to consider I.A.Nos.2 and 3 filed by him. In the meanwhile, I.A.Nos.6, 7 and 8 were filed on behalf of the plaintiff seeking to recall PW-2, permit to lead further chief



evidence of PW-2 and also permit him to produce additional documents. The said applications were orally objected by defendant No.1. The Trial Court had allowed the said applications on 12.11.2021. Thereafter, I.A.No.9 was filed by defendant No.1 before the Trial Court on 25.11.2021.

8. Perusal of the averments found in the affidavit which is filed in support of the application by defendant No.1 to condone the delay of more than ten years in filing the written statement and to permit the defendant No.1 to file the written statement would go to show that except stating that since the applications in I.A.Nos.2 and 3 were pending consideration, the written statement was not filed, no other explanation whatsoever has been offered by defendant No.1 for condoning the inordinate delay of more than ten years in filing the written statement.

9. The Hon'ble Supreme Court in the case of  
**ATCOM            TECHNOLOGIES            LIMITED            VS.**



**Y.A.CHUNAWALA AND CO. AND OTHERS - 2018(5)**

**SCJ 424** in a case where the High Court had condoned delay of five and a half years in filing the written statement in paragraph Nos.16 and 17 as observed as follows:

*"16. In such a situation, onus upon the Defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within thirty days. When that is a requirement, could it be a ground to condone delay of more than 5 years even when it is calculated from the year 2009, only because of the reason that Writ of Summons were not served till 2009?"*

*17. We fail to persuade ourselves with this kind of reasoning given by the High Court in condoning the delay, thereby disregarding the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 and the spirit behind it. This reason of the High Court that delay was condoned 'by balancing the rights and equities' is farfetched and, in the process, abnormal delay in filing the written statement is condoned without addressing the relevant factor, viz. whether the Respondents had furnished proper and satisfactory explanation for such a delay. The approach of the High Court is clearly erroneous in law and cannot be countenanced. No doubt, the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 are procedural in nature and, therefore, hand maid of justice. However,*



*that would not mean that the Defendant has right to take as much time as he wants in filing the written statement, without giving convincing and cogent reasons for delay and the High Court has to condone it mechanically. It is also to be borne in mind that when the matter was listed on January 29, 2015, it was specifically recorded that no written statement was filed and the two suits were adjourned for ex-parte decree. In other suit i.e. Suit No. 3813 of 2000, similar Notice of Motion seeking condonation of delay was rejected though it contained same kind of explanation and that order has been upheld till this Court. On this ground also, there was no reason to take a contrary view in the instant matter when both the suits were taken up together and proceed simultaneously."*

10. In the case of **NITIN MAHADEO JAWALE AND OTHERS VS. BHASKAR MAHADEO MUTKE - 2024 INSC 902** wherein the blame was thrown on the head of the advocate representing the party and the Trial Court had condoned the delay of four and a half years in filing the written statement, in paragraph No.7, the Hon'ble Supreme Court has observed as follows:

*"7.Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay*



*as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance"*

11. In the case of **SCG CONTRACTS (INDIA) PRIVATE LIMITED VS. K.S.CHAMANKAR INFRASTRUCTURE PRIVATE LIMITED AND OTHERS - (2019) 12 SCC 210** the Hon'ble Supreme Court has held that the fact that the defendant was pursuing his application under Order VII Rule 17 for rejection of plaint cannot be a ground to allow defendant to file his written statement beyond the period of 120 days.

12. The High Court of Delhi in the case of **ZENITH VIPERS SOLUTIONS PVT. LTD. VS. JASMEET SINGH MARWAH - CM(M)900/2025 & CM.APPL.29342-29344/2025** disposed of on 15.05.2025. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of SCG Contracts in paragraph number 18, has observed as follows:

*"18. Merely, because an application under Order VII Rule 11 CPC has been filed and is pending adjudication would*



*not ipso facto extend the period of limitation meant for filing of written statement. Reference in this regard be made to SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd., (2019) 12 SCC 210 wherein Hon'ble Supreme Court clarified as under:-*

*"14. The learned counsel appearing for the respondents also relied upon R.K. Roja v. U.S. Rayudu [R.K. Roja v. U.S. Rayudu, (2016) 14 SCC 275: (2017) 3 SCC (Civ) 270] for the proposition that the defendant is entitled to file an application for rejection of plaint under Order 7 Rule 11 before filing his written statement. We are of the view that this judgment cannot be read in the manner sought for by the learned counsel appearing on behalf of the respondents. Order 7 Rule 11 proceedings are independent of the filing of a written statement once a suit has been filed. In fact, para 6 of that judgment records (SCC p. 277)*

*"6. However, we may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement."*

13. In the case of **KAILASH** (supra) on which reliance has been placed by the learned counsel for the contesting respondent. It is observed in paragraph number 46(v) as follows:

*"46(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for*



*expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."*

14. From a reading of the aforesaid, it is apparent that extension of time to file a written statement can be granted under exceptional circumstances, which occasion beyond the control of the defendant, who has given satisfactory explanation for the delay. In the case on hand, even though the delay is more than ten years in filing the



written statement, absolutely no explanation has been offered on behalf of the defendant No.1 to condone the same and permit him to file the written statement.

15. In the case of **C.N.RAMAPPA GOWDA** (supra) the Hon'ble Supreme Court has observed that merely for the reason that the defendant had not contested his suit by filing written statement, the Trial Court cannot pass a ex-parte decree unless the plaintiff has made out a *prima facie* case, when the suit involves disputed question of facts. In paragraph number 26 of the said judgment, the Hon'ble Supreme Court has observed as follows.

*"26. It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex-parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex-parte judgment although may*



*appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial."*

16. However, the same is not the fact situation in the present case. Therefore, the said judgment cannot be made applicable to the case on hand. In the case of **R.K.ROJA VS. U.S.RAYUDU AND ANOTHER - 2016 SCC ONLINE SC 682**, it has been held that once an application is filed under Order VII Rule 11 of CPC, the Court has to dispose of the same before proceeding with the trial. In paragraph number 5 of the said judgment, it is observed as follows:

*5. Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case the application is rejected, the defendant is entitled to file his written statement*



*thereafter (see Saleem Bhai v. State of Maharashtra<sup>2</sup>). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote the relevant portion from para 20 of Sopan Sukhdeo Sable case: (SCC pp. 148-49)*

*"20.... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant."*

17. It is also relevant to note here that in the said judgment, it is also observed that liberty to file application for rejection of plaint under Order VII Rule 11 of CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement.



18. In the case on hand, though the defendant No.1 has not assigned any satisfactory explanation for condoning the inordinate delay of more than ten years in filing the written statement and on the other hand in his affidavit filed in support of the application filed to condone the delay he has stated that the defence that is sought to be taken by him is already placed on record in different forms by filing I.A.Nos.2 and 3 which are pending consideration and therefore written statement was not filed earlier. The Trial Court without appreciating the aforesaid aspects of the matter has allowed I.A.No.9 and having condoned the delay of more than ten years and received the written statement.

19. In my considered opinion, the Trial Court was not at all justified in allowing I.A.No.9 for the reasons stated in the order, when defendant No.1 had failed to assign any valid or satisfactory explanation for condoning the inordinate delay of ten years. Under the



circumstances, I am of the opinion that the order impugned cannot be sustained. Accordingly, the following:

**ORDER**

(i) The writ Petition is ***allowed.***

(ii) The impugned order dated 07.03.2022 passed on I.A.No.9 in O.S.No.391/2011 by the Court of IV Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru is set aside.

**Sd/-  
(S VISHWAJITH SHETTY)  
JUDGE**

KVR  
List No.: 1 Sl No.: 14