

APPLICATION NO.3801 OF 2016**IN****C.S.NO.751 OF 2006****PUSHPA SATHYANARAYANA, J.**

This application is filed by the applicant / sixth defendant to condone the delay of 836 days in filing the written statement.

2.The applicant / sixth defendant has stated that the present counsel was engaged by him and had entered appearance in the suit on 22.03.2016. The application filed to receive additional documents filed by the plaintiff was allowed on 08.06.2016, on which date, the counsel had appeared. It is stated that the counsel was under the bonafide impression that written statement had already been filed on behalf of the sixth defendant, by the previous counsel. In fact, P.W.1 was examined in chief and only during the cross examination of P.W.1, on verification of the Court records, it was found that the written statement of the sixth defendant had not been filed. Thus, it came to light that the written statement was not filed in Court and taken on file though the trial had

already commenced. Therefore, the above application is filed along with the written statement.

3.The learned counsel for the respondent / plaintiff objected that the delay cannot be condoned at this stage, as already the plaintiff's evidence had commenced and in progress and that it would alter his case. The applicant / sixth defendant was impleaded only on 22.03.2007.

4.Heard the submissions made on either side and perused the materials available on record.

5.This Court, being satisfied with the reasons stated in the affidavit filed in support of this application and also considering the fact that only P.W.1 has been examined and it is not yet closed, is inclined to condone the delay and take the written statement on file with liberty to the plaintiff to file reply statement, if any.

6.It is stated that P.W.1 had to travel from United States for the purpose of examination incurring heavy expenses. The parties are

therefore directed to co-operate in the completion of the trial at the earliest, however, within a period of three months.

7. Accordingly, the delay is condoned and the application is allowed and the written statement is taken on file, with liberty to the plaintiff to file reply statement, if any. No costs.

09 / 08 / 2016

TK

PUSHPA SATHYANARAYANA, J.

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