



**A.No.4242 of 2023**  
**in**  
**C.S.(Comm.Div) No.49 of 2021**

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**P.T.ASHA, J,**

The above application gives rise to a rather incongruous situation. The respondents/defendants have filed a counter claim in their written statement that was filed into this Court on 03.01.2022. It appears that the summons was served on the respondents on 17.09.2021 and the written statement was filed on 03.01.2022 along with an application for condoning the delay. Thereafter, a copy of both condone delay petition as well as the written statement had been served on the applicant/plaintiff. It transpires that the respondents have not re-presented the condone delay petition since they had the benefit of extension by the orders of the Hon'ble Supreme Court in Suo Moto (Civil) No.3 of 2020 and therefore the filing of the written statement was in time. However, the fact that the condone delay petition has not been processed has not been intimated to the learned counsel for the applicant, who was under the impression that the petition was yet to be re-presented.



2. In the affidavit that is now filed in support of the application for condoning the delay in filing the written statement to the counter claim, it has been stated by the applicant that it was only when the matter had come up before this Court on 17.07.2023 for framing of issues that he became aware that the written statement to counter claim had not been filed. Therefore, the above application has been filed.

3. It is no doubt true that the counterclaim is akin to the plaint; the written statement to the counterclaim has to be filed within a period of 30 + 90 days as provided for the written statement. However, in the instant case, the respondents have filed the written statement along with the petition to condone the delay, since the written statement has been filed much beyond the period of 120 days. The respondents have also admitted this fact in their counter-affidavit.

4. In the above circumstances, the applicant cannot be precluded from filing their defense to the counterclaim as an anomaly has arisen only on account of the respondents' failure to inform the learned counsel



for the applicant / plaintiff that he has not re-presented the delay petition,  
as there is no delay in filing the written statement.

5. In these circumstances, this Court has to necessarily allow the delay petition and accordingly, the delay in filing the written statement to the counterclaim is condoned and the counterclaim is taken on file. Accordingly, this application is ordered.

6. The learned counsel for the applicant now seeks time to file his affidavit of admission and denial, in the light of this Court allowing this application. The same shall be filed on or before 27.09.2023.

7. Post the suit on 29.09.2023.

21.09.2023

srn



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**P.T.ASHA.J**

srn

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