



A.No.6803 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

RESERVED ON
12.02.2025

PRONOUNCED ON
23.06.2025

CORAM

THE HONOURABLE MR JUSTICE K.KUMARESH BABU

A.No.6803 of 2025

in

C.S.No.27 of 2024

1.K.Palani

2.Senthil Kumar alias K.Senthil Raj

Applicant(s)

V s

1.C.Raja

Proprietor of M/s.Honest Builders
Having Office at No.13/17,
Rear Buildings, 18th Avenue,
Ashok Nagar, Chennai – 600 083.

2.Mrs.K.Sridevi

Respondent(s)

For Applicant(s) : Mr.Davidson Devashish
for Mr.Thomas T. Jacob

For Respondent(s): Ms.R.Aparna for R1
for M/s.G.Vijay Anand Associates
No appearance for R2

ORDER

This instant application has been filed to condone the delay of 175 days in filing of written statement along with counter claim filed by the applicants/1st & 2nd defendants and to accept the written statement along



with counter claim.

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2. Heard Mr.Davidson Devashish, learned counsel appearing for M/s.Thomas T. Jacob, learner counsel appearing for Applicants and Mr.R.Aparna, learned counsel appearing on behalf of M/s.G.Vijay Anand Associates, appearing for the Respondents.

3. Mr.Davidson Devashish, learned counsel for the applicants would submit that the present suit had been filed by the first respondent seeking for a recovery of monies towards compensation for the work done by the plaintiffs. He would submit that there was also a counter claim by the applicants as against the plaintiffs and therefore, they had to collect necessary materials for making the counter claim and in that aspect there had occasioned the delay of 175 days in filing their written statement along with counter claim. The reasons attributed for the delay is bonafide and if such delay is not condoned, the applicants would be put to irreparable loss and undue hardship.

4. Countering his arguments, Ms.R.Aparna, learned counsel appearing on behalf of the respondents would contend that sufficient cause had not



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been shown for condoning the delay of 175 days in filing the written statement. She would contend that the conduct of the applicants only show their attitude to procrastinate the proceedings by making false, frivolous and fabricated reasons and therefore, the application ought to be dismissed by this court.

5. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

6. A claim had been made by the first respondent as against the applicants and the second respondent in the application for a sum of Rs.2,26,00,000/- as compensation for the work done by him in compliance of the letter dated 09.12.2021. The defendants 1 & 2 had taken out the present application to condone the delay of 175 days in filing their written statement along with the counter claim. They had attributed their financial difficulties in staking their counter claim and according to them for that reason there has been a delay in filing the written statement. In a suit for compensation, this Court cannot shun away the right of the defendant by rejecting the written statement on the ground of delay. The applicants who are the defendants have also raised a counter claim as against the plaintiff



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and had also sought various reliefs as against them. The parties to a proceedings cannot left high and dry without an opportunity to defend their case in a proper manner. The reasons attributed is that for raising the fund to pay the Court fee in the counter claim there has been a delay in filing the written statement.

7. The written statement is filed under Order VIII Rule 1 CPC, a counter claim is filed under Order VIII Rule 6 A. Rule 6B reads as follows:

“...6B. Counter-claim to be stated.- Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim...”

A reading of Rule 6 B of Order VIII of CPC would envisage that the defendant should in his written statement also state the grounds supporting his counter claim and also indicate that he also does so by way of a counter claim.

8. Order VIII Rule 6A is in the nature which permits a defendant in a suit to also make a claim against the plaintiff which arises out of a different cause of action. Therefore, the reasons for the defence to the suit by way of a written statement can be different from the counter claim that is sought to be made against the plaintiff. The object and reason for introducing the



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amendment to Order VIII by introducing Rule 6 A to 6 G was only to see that the parties to a *lis* are not dragged to different Courts and whatever *lis* that is pending on the date of the plaint to which the written statement is filed can be decided by a same Court. Order VIII Rule 6 A only envisages a pecuniary jurisdiction and there is no territorial jurisdiction in filing a counter claim. Therefore, this Court is of the view that the written statement filed under Order VIII Rule 1 and the counter claim made under Order VIII Rule 6A should be by two separate pleadings falling under Order VIII Rule 1 and Order VIII Rule 6 A respectively. A set off under Order VIII Rule 6 can be clubbed along with Order VIII Rule 1 written statement.

9. In that aspect, this Court is of the view that the Rules relating to the same followed by the Madras High Court namely Madras High Court Original Side Rules would have to be amended necessitating two separate pleadings. In such view of the matter, the Registry is directed to place a copy of this Order before My Lords Hon'ble Chief Justice to decide whether any amendment to this effect would have to be carried out in the Madras Original Side Rules.

10. Considering the fact that a Division Bench of this Court in



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Comp.A.Nos.470 to 473 of 2007 in C.P.No.57 of 1988 vide order dated

22.08.2023 had held that the practice of the Court can also be a Rule of law and considering that a practice of this Court even after the amendment to Order VIII in the year 1976 was permitting the counter claim to also be clubbed along with the written statement and also by considering the fact that what the applicants seek now is to defend the claim against the first respondent and also to putforth the claim against him, the delay that had been caused should be pragmatically viewed.

11. For the aforesaid reasons, the application stands allowed and the delay is condoned. In fine, the Registry shall accept the written statement along with counter claim of the first and second defendants on the file of this suit.

23.06.2025

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Index: Yes/No

Internet: Yes/No



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Pre-Delivery Order in
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