

**CS No.871/18**  
**Fresenius Kabi VS SMS**

07.09.2021

Present: Sh. Sudhir Kumar Makkar, Sr. Adv. and Ms. Veera Mathai, Ld. Counsel for plaintiff present through VC.  
Ms. Manmeet Arora, Ld. Counsel for defendant present through VC.

Heard on the application of the defendant for foreclosing right of the plaintiff to file replication.

WS was filed by defendant in this case on 29.03.2019. Thereafter on 23.04.2019, matter was fixed, inter alia, for filing of replication for 18.09.2019 but the replication was eventually filed by plaintiff on 06.08.2020 through E-filing during the lockdown.

In the meanwhile, the application seeking foreclosure of the right to file replication was moved by the defendant on 03.12.2019 and its reply was also filed by the plaintiff.

Ld counsel for defendant submits that no sufficient cause is made out for not filing the replication within time and delay can't be condoned in a mechanical and casual manner and the discretion has to be exercised only when sufficient cause is made out. In her support, she relies on '**Desh Raj Vs. Balkishan**' (2020) 2 SCC 708. Perused.

On the other hand, Ld counsel for plaintiff submits that since filing of the WS, no effective Court proceedings took place and in the meanwhile, the lockdown on account of Covid-19 ensued and further, the earlier counsel of the plaintiff had left the office and

**Contd...2/-**

**CS No.871/18**

**Fresenius Kabi VS SMS**

because of inadvertent miscommunication, the replication could not be filed in time and plaintiff has already moved the application as well for condoning the delay.

Seen the record. File reflects that on 23.04.2019, the matter was fixed for filing of replication for 18.09.2019 but on 18.09.2019, though the counsel of both the parties were present but Reader gave the date as the Ld Presiding Officer had transferred and on next date i.e 03.12.2019, again no effective proceedings took place on the same ground and on this date, the application in hand was moved and thereafter the date of 24.03.2020 was given when nationwide lockdown on account of Covid-19 had already started and thereafter, the matter was taken up on 10.08.2020 but in the meanwhile, on 06.08.2020, the replication was filed.

Perusal of the judicial record reflects that though the matter was fixed for replication but in effect, during the intervening period, on account of the transfer of the Ld. Predecessor of the Court, the matter could not be taken up and only the Reader gave the dates.

Ordinarily, the plaintiff ought to have filed the same within the prescribed period but considering the totality facts and circumstances and further on account of the lockdown, in the interest of justice, delay is condoned and the replication is taken on record and defendant can be compensated for the delay by costs. Plaintiff is

**Contd...3/-**

**CS No.871/18**  
**Fresenius Kabi VS SMS**

directed to pay cost of Rs. 2,000/- and the applications in this regard are accordingly disposed off.

Put up for filing of affidavit of admission/denial with copies exchanged in advance and for framing of issues on **05.01.2022**.

**(MUNISH MARKAN)**  
**Additional District Judge-03**  
**Patiala House Courts, New Delhi**  
**07.09.2021**