

**ORDER BELOW APPLICATION VIDE EXH.126 IN R.C.S.No.138/2012**

(Rambhau Kedar Vs. Bala @ Rajpal Kedar)

1] The present application is filed by defendant Rambhau Kedar (Defendant in Counter claim) to set aside NO WS order to pass against him.

2] It is contended that, defendant could not file his written statement within time because he was unable to attend the Court due to sickness, viral fever. There will be no loss caused to the plaintiffs if the application is allowed, in fact, it will be helpful to proceed with the matter. Hence, prayed to set aside No WS Order.

3] Plaintiffs in counter claim have filed their say below Exh. 127 and resisted the same. The plaintiffs have specifically denied all the contentions in the application. It is contended that, the case was fixed for written statement on 26.03.2019 and 18.06.2019 and thereafter the case was fixed for issues from 05.08.2019. The Court has passed no WS order on 18.06.2019. It is further contended that, plaintiff was doing his business at Patansawangi and at Nagpur. False story is contended by the plaintiff. There is no evidence on record in order to make out a sufficient caused. Hence, prayed to reject the application.

4] Heard both the advocates. Advocate Shri. Thaore submitted that, the applicants have not filed delay condonation application on record. Further he submitted that, onus is upon defendant to show sufficient grounds and bring out exceptional, occasional circumstances beyond which the defendant is seeking extension of time to file written statement. To support this argument the advocate orally submitted authorities of *Mh.L.J.2019 SC26, 2004(4) Mh.L.J.719 and 2005(2) Mh.L.J.775*. Considering the contentions, following points arise for my consideration and I have recorded my findings thereon along with the reasons as below:

Sr.No.	Points	Findings
1]	Whether NO WS order passed against defendant is liable to set aside ?	Yes
2]	What order ?	As per final order...

**REASONS:**

5] It is settled law that, WS to a Counter Claim has to be filed within 4 weeks from the date of receipt of WS/plaint by the defendant or within such a period as may be fixed by the Court. On perusal of written statement it can be seen that, the Court has not passed any order in regard of period to file written statement to counter claim. The written statement Exh.125 is read and recorded on 15.01.2019. The WS was expected to be filed on or before 15.02.2019. The present application is filed on 11.11.2019. There is approximately 9 months delay to file written statement on record. Delay of 9 months can be compensated by imposing reasonable cost upon the applicant. The counter claim/suit is filed for possession. The valuable rights of applicant are involved in the suit property. Hence, opportunity has to be given to the applicant. Hence, considering the principle of natural justice I answer point no.1 in the affirmative and in result of point no.2 I pass following order:

**:: ORDER ::**

- 1] The application vide Exh.126 is allowed on cost of Rs.1000/- to be given to the plaintiff on or before next date.
- 2] Cost in Cause.

Date: 23.08.2021

**( R.B.Kulkarni )**  
Jt. Civil Judge Junior Division,  
Saoner.

**Endorsement**

Case argued on	:	23.08.2021
Order dictated on	:	23.08.2021
Transcription ready on	:	23.08.2021
Order checked and signed on	:	23.08.2021

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**Certificate**

I affirm that the contents of this PDF order are same word to word, as per the original order.

Name of Stenographer :- A. S. Mahurkar