



3. However, respondent No. 2, who is an advocate, has opposed this request and has submitted that due to limitation certain rights have accrued in his favour which cannot be taken away summarily. Notwithstanding, we are of the view that the limitation to seek a remedy by appellant has expired due to pendency of the suit before the learned single Judge in which the appellant had raised a counter-claim. The suit was filed in 2013 and the plaint was rejected in the year 2023 after ten years. For ten years, the counter-claim of appellant in the shape of written statement was pending with the Court without any material progress. Respondent No. 2 has taken the plea that written statement was filed, after four years, in 2017, therefore, the observation of ten years is not right. However, we feel that this was the issue between the learned single Judge and the appellant. Under the law, written statement has to be filed within a certain period but the Court allowed the appellant to file the written statement after that period and meanwhile took no action against her, even the respondent did not resist delay in filing of the written statement. The time elapsed, therefore, cannot be considered to have any adverse effect over the right of the appellant. Hence, such period cannot be considered to come in the way of the appellant to seek remedy in law qua her rights. We, therefore, infer that appellant has a right to raise her counter claim in an independent proceeding. The limitation for filing such claim would be counted from the date of impugned order viz.31.01.2023 when CMA No.5620/2014 was allowed and the plaint was rejected.

With above observations, the appeal is disposed of.

JUDGE

JUDGE





