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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 389/2017**
M/S SAKUMA EXPORTS LIMITED Plaintiff
Through: Ms Amit S. Amist with Ms. Mithila Jai,
Adv for plaintiff & D1 in CC (COMM)
1/2018.

versus

M/S SIMBHAOLI SUGARS LIMITED & ORS Defendants
Through: Mr. Mark Wright, Adv on behalf of Mr.
A. Mahajan, Adv for Counter
Claim/defendant No.1.
Mr. Prabhakar Kandpal, Adv for D2 in
counter claim.
Mr. O. P. Gaggar, Adv for D3/Counter
Claimant.

CORAM:
SH. RAJ KUMAR TRIPATHI (DHJS), JOINT REGISTRAR
(JUDICIAL)

ORDER
% **17.05.2019**

IA No. 5581/2019 (u/O VIII Rule 1 CPC r/w Section 5 of The
Limitation Act) in CC (COMM) 1/2018

Reply to the IA not filed by counter claimant.

Heard on IA. Record perused.

Perusal of record shows that the applicant/ defendant No.3 was served on 15.02.2018. Written statement in the Counter Claim has been filed by applicant on 21.04.2018. Thus, the applicant filed written statement in the Counter Claim within 59 days from the date of service, which is within 120 days.

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Moreover, it is seen that the counter claimant has sought no relief against the applicant. The applicant has only being impleaded as a party in the counter claim.

For the reasons stated above, and the averments made in the application, instant application filed by applicant/defendant No.3 is hereby allowed. Delay in filing of written statement by applicant/defendant No.3 in the counter claim is hereby condoned in the interest of justice.

Written statement and affidavit for admission/denial of documents filed by defendant No.3/applicant is directed to be taken on record.

The IA stands disposed of accordingly.

IA No. 4774/2019 (u/O VIII Rule 1 r/w Section 151 CPC filed by plaintiff/Defendant No.1 for seeking condonation of delay in filing written statement in response to the counter claim)

IA No. 4775/2019 (u/S 151 CPC filed by plaintiff/D1 for re-filing the application for condonation of delay (filed on 23.03.2018 vide diary No. 93035) filed alongwith written statement to counter claim)

Reply to the IA not filed by counter claimant.

Heard on IAs. Record perused.

Perusal of record shows that copy of counter claim alongwith complete paper book was supplied to counsel for plaintiff/ defendant No.1 on 04.01.2018. The applicant/ defendant No.1 has admittedly filed its response to the counter claim on 23.03.2018 i.e. within 120 days from the date of supply of complete paper book.

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For the reasons stated in the application and submissions advanced by learned counsel for both the parties, delay in re-filing of application for condonation of delay as well as delay in filing of written statement to the counter claim by defendant No.1/plaintiff is hereby condoned, in the interest of justice.

Both the IAs are disposed of accordingly.

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As per report, defendant No.2 has been served on 07.02.2018. The defendant No.2 filed its response to the counter claim on 29.05.2018. On the oral request made by learned counsel for defendant No.2, delay in filing of written statement by defendant No.2 is hereby condoned, in the interest of justice, subject to payment of cost of Rs 5,000/- to counsel for counter claimant within two weeks.

The written statement and affidavit for admission/denial of documents already filed by defendant No.2 is directed to be taken on record, subject to payment of cost as directed.

IA No. 3890/2019 (u/O VIII Rule 10 r/w Section 151 CPC filed by counter claimant for striking of defence of defendants 1, 2 & 3) in CC (COMM) No. 1/2018

Reply to the IA filed by defendant No.1/plaintiff as well as defendant No.3.

In view of aforementioned IAs, the instant application filed by counter claimant has become infructuous. Accordingly, as prayed, same is disposed of.

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Pleadings in the main suit as well as in the counter claim are complete. Parties have also filed their affidavit for admission/denial of documents.

As jointly prayed, list for marking of exhibits to the documents on 11.07.2019.

**RAJ KUMAR TRIPATHI (DHJS)
JOINT REGISTRAR (JUDICIAL)**

MAY 17, 2019

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