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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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CS(COMM) 711/2017 & CC (COMM) 41/2018

MS. ASHA DASS & OTHERS

..... Plaintiff

Through: Ms. Manpreet Kaur, Adv.

versus

PRIME ROAD SOLUTIONS PVT. LTD. & OTHERS

..... Defendant

Through: Mr. Shekhar Gupta, Adv.

**CORAM:**

**SH. VIJAY SHANKAR (DHJS), JOINT REGISTRAR  
(JUDICIAL)**

**ORDER**

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**20.09.2019**

**I.A.No. 15134/2018 under Section 151 CPC for condonation of delay in re-filing the application filed on behalf of the non counter-claimants/plaintiffs**

Arguments on the aforesaid application already heard. Perused. The aforesaid application of non counter-claimants/plaintiffs is allowed subject to just exceptions.

I.A stands disposed of.

**I.A.No. 15133/2018 under Section 5 of the Limitation Act, 1963 r/w Section 151 CPC r/w Order 8 Rule 1 CPC seeking condonation of delay of 13 days in filing the written statement to the counter-claim filed on behalf of the non counter-claimants/plaintiffs**

By way of present order, I shall dispose of application of the non counter-claimants/plaintiffs under Section 5 of the Limitation

Act, 1963 r/w Section 151 CPC r/w Order 8 Rule 1 CPC. In the present application, the non counter-claimants/plaintiffs have prayed for condonation of delay of 13 days in filing the written statement to the counter-claim.

Brief facts necessary for just adjudication of the present application, as stated in the application, are that the application of the counter-claimant/defendant no.1 for condonation of delay in filing the counter-claim was allowed vide order dated 20/03/2018. Till date, no summons/notice have been issued by the Court in the counter-claim filed by the counter-claimant/defendant no.1 and as such in the absence of any summons/notices, there was no occasion for the plaintiffs to file any written statement to the counter-claim. However, when the matter was listed on 04/07/2016, the Joint Registrar was of the view that the plaintiffs should file their written statement to the counter-claim. Till date, no summons/notice have been issued by the Court in the counter-claim filed by the counter-claimant/defendant no.1, however, to avoid any controversy/technicalities, the non counter-claimants/plaintiffs have filed their written statement to the counter-claim. Though there is no delay in filing the written statement to the counter-claim because the time to file written statement starts from the date of service of the summons/notices and in the present case, no summons/notices have been issued by the Court, however, to avoid any controversy and technicalities, the non counter-claimants/plaintiffs have filed the present application as an abundant caution. In the present case, no summons/notices have been issued in the counter-claim and no time

period has been fixed by the Court to file written statement to the counter-claim. As per Order 8 Rule 6A(4) CPC, the counter-claim is to be treated as a plaint and governed by the rules applicable to the plaint. The date of counter-claim shall be treated as 21/05/2018, when the cost of Rs. 1500/- was paid by the counter-claimant/defendant no.1 to the non counter-claimants/plaintiffs in terms of order dated 20/03/2018. From calculating from the date i.e. 21/05/2018, there is delay of 13 days in filing written statement to the counter-claim. Written statement to the counter-claim has not been filed by the non counter-claimants/plaintiffs within stipulated time for the genuine and *bonafide* reasons that no summons/notices have been issued in the counter-claim and therefore, the non counter-claimants/plaintiffs are not supposed to file any written statement. The delay, if any, caused in filing the written statement to the counter-claim is totally unintentional and *bonafide* and the same may be condoned.

The defendants have not filed any reply to the aforesaid application.

Arguments already heard on the aforesaid application. Perused the material available on record.

The present suit is a commercial suit filed under The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (hereinafter referred to as “Act”). By way of present application, the non counter-claimants/plaintiffs are seeking condonation of delay of 13 days in filing the written

statement to the counter-claim. The period for filing the written statement has to be governed by the provisions of Act. As per Act, the defendant shall file the written statement within the statutory period of 30 days and not later than 120 days from the date of service of summons and on expiry of 120 days from the date of service of the summons, the defendant shall forfeit the right to file written statement and the Court shall not allow the written statement to be taken on record.

Vide order dated 20/03/2018, delay in filing written statement by the defendants was condoned and written statement was taken on record. Vide order dated 20/03/2018, an application bearing IA No. 3329/2018 of the counter-claimant/defendant no.1 for condonation of delay in filing the counter-claim was allowed subject to cost of Rs. 15,000/-. It is admitted fact by counsel for the parties that the aforesaid cost was paid on 21/05/2018.

On the one hand, it is the contention of the non counter-claimants/plaintiffs that in the present case, no summons/notices of the counter-claim were issued to the non counter-claimants/plaintiffs and as such there was no occasion for the non counter-claimants/plaintiffs to file any written statement to the counter-claim. On the other hand, the non counter-claimants/plaintiffs have prayed for condonation of delay of 13 days in filing the written statement to the counter-claim. The aforesaid contentions of the non counter-claimants/plaintiffs are self contradictory in this regard.

It is the contention of the non counter-claimants/plaintiffs that in the counter-claim, no summons/notices have been issued to the non counter-claimants/plaintiffs. Vide order dated 20/03/2018, an application bearing IA No. 3329/2018 of the counter-claimant/defendant no.1 for condonation of delay in filing the counter-claim was allowed subject to cost of Rs. 15,000/-. Hence, the date of taking on record the counter-claim of the counter-claimant/defendant no.1 is 20/03/2018 when the delay in filing the same was condoned. There was no occasion to issue the summons in the counter-claim to non counter-claimants/plaintiffs as counsel for the plaintiffs were very much present on 20/03/2018. Even the copy of the counter-claim was already stated to be received by counsel for the non counter-claimants/plaintiffs on 05/03/2018. In view of the same, the aforesaid contention of the non counter-claimants/plaintiffs is not tenable.

It is the contention of the non counter-claimants/plaintiffs that date of the counter-claim shall be treated as 21/05/2018 as the cost for condonation of delay in filing the counter-claim was paid on 21/05/2018. The aforesaid contention of the non counter-claimants/plaintiffs has no force as vide order dated 20/03/2018 no date was fixed for payment of the said cost and it was implied that the aforesaid cost was to be paid on the next date of hearing. It is admitted fact that the aforesaid cost was paid on the next date of hearing i.e., 21/05/2018.

By way of present application, the non counter-claimants/plaintiffs have prayed for condonation of delay of 13 days in filing the written statement to the counter-claim. In the present application, the non counter-claimants/plaintiffs have not assigned any reason for delay in filing the written statement to the counter-claim.

The counter-claim was taken on record vide order dated 20/03/2018. In the present case, period to file the written statement to the counter-claim has to be counted from 20/03/2018. In the present case, the non counter-claimants/plaintiffs have filed the written statement to the counter-claim on 07/08/2018. In the present case, the non counter-claimants/plaintiffs have filed the written statement to the counter-claim beyond the statutory period of 120 days. It is well settled law that in a commercial suit, on expiry of 120 days, the defendant shall forfeit the right to file written statement and the Court shall not allow the written statement to be taken on record. In view of the same, the written statement of the non counter-claimants/plaintiffs to the counter-claim cannot be permitted to be taken on record. Considering the facts, circumstances and in view of the submissions made, the aforesaid application of the non counter-claimants/plaintiffs is dismissed. No order as to costs.

IA stands disposed of.

**CS(COMM) 711/2017 & CC (COMM) 41/2018**

Re-notify the matter for admission/denial of the documents on  
**10<sup>th</sup> December, 2019.**

**VIJAY SHANKAR (DHJS)  
JOINT REGISTRAR (JUDICIAL)**

**SEPTEMBER 20, 2019/nk**