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

+ C.R.P. 165/2017

UNIFAX SYSTEMS

..... Petitioner

Through: Mr. Rajeev Sharma & Mr. B.P.
Sharma, Advs.

Versus

INTEGRATED OFFICE EQUIPMENT
& SOLUTIONS PVT LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.07.2017

CM No.26629/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

C.R.P. 165/2017 & CM No.26630/2017 (for stay)

3. This Revision Petition under Section 115 of the CPC impugns the order [dated 3rd March, 2017 in Civil Suit No.9179/2016 of the Court of Additional District Judge (ADJ)-04, South East District, Saket Courts, New Delhi] of dismissal of the application of the petitioner / plaintiff under Order XXII Rule 6 of the CPC for a decree on admissions.
4. The counsel for the petitioner / plaintiff has drawn attention to the letters dated 29th January, 2012 and 26th February, 2012 at page nos. 64 and 66 of the paper book written by the petitioner / plaintiff to the respondent / defendant and to the replies of the respondent / defendant dated 4th February,

2012 and 26th March, 2014 at pages 65 and 71 of the paper book to contend that the respondent / defendant therein has admitted the liability.

5. As per para 4 of the plaint, the claim in the suit is for recovery of the price of invoices dated 16th February, 2011, 25th March, 2011 and 31st March, 2011.

6. On enquiry, it is informed that the suit from which this petition arises was instituted on 9th September, 2014.

7. The petitioner / plaintiff in para 12 of the plaint has however pleaded that the cause of action has accrued on 16th February, 2011 when the goods were supplied to the defendant and when the communications aforesaid were issued.

8. It is settled principle of law (see *Santanu Sur Vs. Gail India Limited* MANU/DE/1987/2014 (DB)) that merely sending communications does not extend the period of limitation.

9. The counsel for the petitioner / plaintiff on enquiry states that the suit for recovery of price of goods supplied on 16th February, 2011 should have been filed within three years. Admittedly, the suit was not filed within three years.

10. The counsel for the petitioner / plaintiff states that in fact the respondent / defendant has made part payments from time to time and on account whereof also the limitation would stand extended.

11. However that is not relied upon in para no.12 of the plaint.

12. At best the petitioner / plaintiff can claim reliance on Section 18 of the Limitation Act, 1963 which provides for extension of limitation by

acknowledgment in writing and contend that the limitation stood extended from the replies aforesaid.

13. The counsel for the petitioner / plaintiff, on enquiry, fairly states that the respondent / defendant in its written statement has taken a plea, of the suit claim being barred by time.

14. I am of the view that the question, whether there is any acknowledgment in writing within the meaning of Section 18 supra to extend the limitation for filing suit or not, cannot be decided without evidence or at the stage of Order XII Rule 6 of the CPC.

15. Thus no case for decree on admission is made out.

16. The counsel for the petitioner / plaintiff seeks adjournment to look into the matter.

17. Nothing can be done in this Revision Petition. However, it will be open to the petitioner / plaintiff to, if feels the need, to take corrective steps before the suit Court.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 28, 2017

‘gsr’..