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

Date of Decision : 17th September, 2019

+ **CM (M) 767/2019 & CM APPL. 23274/2019**

INDCON BOILER LTD.

..... Petitioner

Through: Mr. Vikas Aggarwal, Advocate.
versus

M/S MAEDA CORPORATION INDIA & ORS Respondents

Through: Mr. Lalit Chauhan, Mr. Aditya
Sharma and Ms. Swati Bhardwaj,
Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition challenges order dated 12th April, 2019 by which the application of the Petitioner/Plaintiff (*hereinafter*, “*Plaintiff*”) seeking condonation of delay in filing the written statement to the counter-claim of the Respondents/Defendants (*hereinafter*, “*Defendants*”) has been rejected by the Id. Trial Court.
2. The Plaintiff had filed a suit for recovery against the Defendants. The same was filed as an ordinary suit prior to the enactment of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (“*Commercial Courts Act*”) The Defendants filed a counter-claim, seeking adjustment in the form of set off, as also compensation for losses. The said counter-claim was registered by the Id. Trial Court on 25th October, 2018. However, strangely, prior to the registration of the counter-claim itself, on 5th March, 2018, the trial court records that the opportunity to file the written statement to the counter claim

stands closed. The Plaintiff tendered its written statement on 12th April, 2019 along with an application under Order VIII Rule 1 CPC. The Court has proceeded on the presumption that since the proceedings are governed by the Commercial Courts Act, 2015, the time limit of 120 days for filing written statement is mandatory. The Id. Trial Court has thereafter proceeded to frame issues in the matter.

3. Ld. Counsels for the parties have taken the Court through the order sheet, and it is clear that there was an ambiguity as to whether the counter-claim was registered separately. In order for the 120 days' time to be triggered under Order VIII Rule 1 CPC, the date of registration of the counter-claim is important, inasmuch as that would be the date on which the Plaintiff would be deemed to be served in the counter-claim. Though the Plaintiff may have copies of the same, technically, the counter-claim cannot be taken to be registered.

4. Under the Commercial Courts Act, read with the provisions of the CPC, it is clear that a counter-claim is governed by the same rules as applicable to plaints. In commercial suits, in view of the provisions of Order VIII Rule 1 CPC and Order VIII Rule 10 CPC, the Court cannot make an order extending time for filing of the written statement. This is also clearly settled by the judgement of the Supreme Court in ***SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors, Civil Appeal 1638/2019 (Decided on 12th February, 2019)***. Order VIII Rule 6A CPC reads as under:

“(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of a counter claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to

the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not; Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter claim shall be treated as a plaint and governed by the rules applicable to plaints.”

5. Order IV Rule 1 & 2 CPC requires every plaint to be registered by the Court. The said provision reads as under:

“ 1. Suit to be commenced by plaint – (1) Every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2)

2. Register of suits- The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.”

6. A conjoint reading of the above-mentioned provisions clearly shows that every counter-claim is required to be registered by the Court. Only thereafter can summons be issued by the Court. The time for filing a written

statement runs from the date of service of summons.

7. It is perfectly possible that in case of a Counter Claim, when it is presented, the Plaintiff may accept summons in the Court itself. However, the order ought to record specifically that the Counter claim is registered and service of summons is accepted. It is only thereafter that the time for the Plaintiff to file its written statement to the counter-claim begins to run.

8. Since, the suit originally was instituted on the original side of this Court and thereafter transferred to the Saket District Court, it appears that the counter-claim never came to be registered. The Commercial Courts Act was thereafter notified. In view of this prevailing confusion in the proceedings of the suit, it appears that the Plaintiff did not file the written statement to the counter-claim.

9. Under these circumstances, the written statement of the Plaintiff to the counter-claim of the Defendants is permitted to be taken on record, subject to payment of Rs.10,000/- as costs. The costs be paid within a period of two weeks from today. It is made clear that henceforth, the suit and the counter claim would proceed under the provisions of the Commercial Courts Act, 2015. If any additional issue needs to be framed in view of the written statement to the counter-claim being taken on record, let the needful be done by the Id. Trial Court on the next date of hearing. It is submitted that the Plaintiff has already filed its evidence.

10. The evidence filed by the Plaintiff shall be tendered and proceeded with in accordance with law. Considering that the suit is a commercial suit, it is directed that the same shall be decided expeditiously. With these observations, the petition and pending application are disposed of.

Registration of Counter-claims and guidelines therefor

11. In order to avoid situations as has arisen in the present case, it is further directed that all trial courts shall follow the procedure set out below, in respect of counter-claims:

- a. Trial Courts ought to ensure that Counter-Claims are examined by the Presiding Officer at the time when the same are presented before the Court.
- b. A specific order shall be passed directing registration of the counter claim and a number being allotted to the same.
- c. If the Plaintiff or the Counsel for the Plaintiff is present, a specific order shall also be passed to the effect that service of summons in the counter-claim is accepted.
- d. If there is more than one plaintiff, and any of the plaintiffs is not present or is not represented in the court, proper summons shall be directed to be issued to the said Plaintiffs.
- e. The time period for filing of the written statement shall then commence.

12. *Dasti* under signatures of the Court Master. The worthy Registrar General is requested to circulate the present order to ensure that registration of counter-claims is done as per the procedure and there is no ambiguity in the timelines for filing of the written statement to the counter-claims.

**PRATHIBA M. SINGH
JUDGE**

SEPTEMBER 17, 2019/dj