



A.No.2980 of 2022

**A.No.2980 of 2022 in C.S.(Comm.Div.) No.61 of 2021**

**SENTHILKUMAR RAMAMOORTHY, J.**

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This application is presented by the defendant seeking permission to lodge a counter claim. The applicant states that services were provided by the applicant to the respondent / plaintiff in relation to the construction of a house. According to the applicant a sum of Rs.2,46,81,285/- was payable in respect thereof, whereas the respondent / plaintiff paid only a sum of Rs.1,87,00,000/- including GST. Consequently, it is stated that a sum of Rs.59,81,285/- is due and payable. Upon adding interest thereto, the applicant / defendant seeks permission to lodge a counter claim for Rs.71,77,541/-.

2. This application is opposed by the respondent / plaintiff on multiple grounds. The first ground is that the counter claim was lodged belatedly. Learned counsel points out that the counter claim did not form part of the written statement although the averments in the counter claim and the written statement are nearly identical. By drawing reference to paragraph 21 of the judgment of the Hon'ble Supreme Court in *Ashok Kumar Kalra -vs- Wing CDR.Surendra Agnihotri and others (2020) 2 Supreme Court Cases 394*, learned counsel contends that the criteria specified therein are not fulfilled by the applicant. The second objection is on the ground that the counter claim is for a sum less than Rs.1 Crore and is therefore not maintainable before the



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Commercial Division. The third objection is that the counter claim does not qualify as a commercial dispute in terms of Section 2(1)(c) of the Commercial Courts Act, 2015 (the Commercial Courts Act).

3. In *Ashok Kumar Kalra -vs- Wing CDR.Surendra Agnihotri and others*, the Hon'ble Supreme Court concluded categorically that Order VIII Rule 6A CPC does not place an embargo on filing a counter claim after filing the written statement. In paragraph 21 thereof, the Court set out ten factors to be taken into consideration in deciding whether to permit the defendant to make a counter claim. The said criteria should be taken into consideration while deciding this application. The plaint was presented on 05.08.2021 and admitted on 22.09.2021. The plaintiff prosecuted interlocutory applications wherein the defendant filed an affidavit of assets so as to avoid orders of attachment. The defendant filed its written statement with an application to condone delay in filing thereof and the written statement was directed to be taken on record on 13.07.2022. In these circumstances, it cannot be said that the counter claim should be rejected on account of delay.

4. In paragraph 6 of the affidavit in support of this application, the applicant stated that it received the sum of Rs.1,87,00,000/- from the



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respondent / plaintiff on 16.10.2019. The suit claim is for the balance due after taking the above into consideration. As such, *prima facie*, the claim is not barred by limitation. As regards the objection that the value of the counter claim is below Rs.1 Crore, the Commercial Courts Act provides in Section 12(e) that the value of both the claim and the counter claim should be taken into account while determining the specified value of the subject matter of the commercial dispute. Consequently, the counter claim is maintainable before the Commercial Division. As regards the contention that the counter claim does not qualify as a commercial dispute, on the basis of the averments in the affidavit in support of this application, it appears to be a dispute relating to the provision of services in terms of clause XVIII of Section 2(1)(c). Therefore, this objection is also rejected. As a consequence of the rejection of these objections, the application is liable to be allowed.

5. For reasons set out above, A.No.2980 of 2022 is allowed and the Registry is directed to receive the counter claim. The plaintiff seeks time to file a written statement in response to the counter claim. List the matter on 02.09.2022.

**05.08.2022**



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