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O.S.A.(CAD)No.114 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.11.2023

DELIVERED ON : 15.02.2024

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE P.DHANABAL**

**O.S.A.(CAD) No.114 of 2022
and
C.M.P.No.9176 of 2023**

M/s.DMY Creation SDN.BHD.,
No.9, Gombak Heights,
Taman Sri Gombak,
Batu Caves 68100, Selangor,
Malaysia,
Represented by its Director,
Mr.Aloysius Pillai @ Alex
Camp at : New No.17/1, First Floor,
Sriram Nagar,
South Street, Alwarpet, Chennai-600 018.

... Appellant

-vs-

M/s.Lyca Production Private Limited,
No.55, Vijayaraghava Road,
T.Nagar, Chennai-600 017.

... Respondent

PRAYER: Original Side Appeal filed under Section 13(1)A of the Commercial Courts Act, 2015 and Under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of the Letters Patent, 1855 against the Judgment dated 07.06.2022 in C.S.No.735 of 2019.



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For Appellant : M/s.Feroz Khan

For Respondent : Mrs.Hema Srinivasan

J U D G M E N T

D.KRISHNAKUMAR, J.

This Intra Court appeal is filed, challenging the judgment dated 07.06.2022 made in C.S.No.735 of 2019.

2. The facts leading to the filing of this appeal, briefly narrated, are as under:

2.1. The plaintiff in the suit is the appellant herein. The Suit was filed for recovery of a sum of Rs.23,70,05,222/- with interest thereon at 30% per annum, from the date of the plaint till the date of realization. The defendant filed a written statement along with counter claim for a sum of Rs.1,58,66,964/- with interest thereon at 18% per annum from the date of the Suit.

2.2. The appellant company entered into an agreement with the respondent company for exhibition and distribution rights for their movie titled "2.O" featuring actor Rajnikanth for the territory



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2.3. After executing of the agreement on 11.12.2018, the respondent raised an invoice dated 13.12.2017 for Rs.10.00 Crores only. According to the appellant, if the respondent has disclosed the real fact that the completion of the movie "2.0" would take more than 1 year for completion, definitely the appellant would not have given his consensus for entering into an agreement for the movie. In total Rs.25.00 Crores was funded to the respondent as on 30.01.2018 including first payment of Rs.5.00 Crores on 17.12.2017 and second payment of Rs.7.00 Crores on 19.12.2017.

2.4. According to the appellant/plaintiff, the calculation on accrued interest from 23.05.2019 till the date of filing the plaint on 30.11.2018 comes to Rs.23,70,05,222/- stands due payable as on 30.11.2019 by the respondent/defendant.



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2.5. The defendant/respondent has filed a written statement along with a counter claim in response to the plaint. According to the defendant, the plaintiff was required to pay a sum of Rs.20 Crores towards consideration for distribution rights for the movie "2.O". The defendant alleges that the present Suit was filed because the defendant decided not to assign rights to the plaintiff for subsequent movies, namely "Kaapan" and "Darbar". The defendant states that the movie "2.O" was released on 29.11.2018. By adverting to specific clauses of the 2.0 agreement, the defendant further states that the plaintiff agreed that no compensation or damages would be paid to the defendant to the plaintiff in case of delay. The defendant categorically denies the plaintiff assertion that a sum of Rs.12 Crore was paid by the plaintiff to the defendant as a Loan. In effect the defendant states that it did not avail of any loan from the plaintiff. Upon taking into consideration the amounts due and payable by the defendant for the movies "2,O" and "Kaala", the defendant states that it was entitled to receive a total sum of Rs.32 Crores for two movies.



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3. The learned Single Judge, based on the pleadings and documents, framed the following issues for consideration:

- (i) Whether the plaintiff extended a loan of Rs.12 crores to the defendant and if so, whether the plaintiff is entitled to interest at the rate of 30% per annum thereon?
- (ii) Whether the sum of Rs.12 Crores was paid by the plaintiff to the defendant towards consideration for the assignment of distribution rights for the movie "Kaala" in Malaysia?
- (iii) Whether the plaintiff is entitled to the sum of Rs.23,70,05,222/- or a part thereof with interest at 30% per annum?
- (iv) Whether the defendant is entitled to its counter claim?
- (v) Whether the parties are entitled to any other reliefs?



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4. The learned Single Judge, after considering the rival submissions and documentary evidences, has rejected the claim made by the plaintiff and the counter claim made by the defendant is partly allowed. Aggrieved by the rejection of the claim made in the plaint, the plaintiff has filed this instant intra-Court appeal.

5. The learned counsel for the appellant/plaintiff contended that the learned Single Judge has erroneously relied on the counter claim made by the respondent, wherein in para 15 the respondent claimed Rs.1,58,66,964/- due for the movies and the respondent has not shown any accounts before the Court or produced any one single document to support their frivolous claim. It is further contended that the documents marked before the learned Single Judge have definitely proved beyond reasonable doubt that the counter claim made by the respondent is baseless and false.

6. Mrs.Hema Srinivasan, learned counsel for the respondent has raised the following contentions:

- (i) The appellant sought to file an appeal only against the Suit claim and though a separate appeal was filed insofar as the counter claim was concerned in



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SR.No.67610/2022, the appellant in Page No.41A of the Appeal Paper Book, made an endorsement requesting to number the appeal only as against the rejection of the suit claim in SR.No.67611/2022 and therefore, the appellant had chosen to prefer an appeal against the counter claim which judgment has attained finality and at the stage of final arguments in the appeal, it can neither be condoned nor rectified and has attained finality.

- (ii) The findings of the learned Single Judge that the appellant is not entitled to interest and cannot deduct amount towards the same from the amounts admittedly payable to the respondent, has attained finality and would be in the nature of *res judicata* in terms of Section 11 of the Civil Procedure Code. The findings insofar as the counter claim is not severable since the observation that no interest has proved, has become final.
- (iii) The appellant ought to have preferred two separate appeals and the appellant has chosen not to press an



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appeal against the counter claim and cannot seek to recant their position and seek to rectify this at the stage of final arguments, because payment of Court fee is also time barred.

- (iv) The appellant has not established how the appeal is maintainable in view of the clear admission made by the appellant in failing to prove that there was a loan and the finding that the respondent's counter claim is payable since there is no interest that can be set off by the appellant/plaintiff, is final and amounts to a res judicata.
- (v) The counterclaim is in the nature of cross suit in terms Order 8 Rule 6-A(2) CPC.
- (vi) Even if no separate number is assigned for counterclaim, even if suit and counterclaim are decided in one common order, even if only one decree is drawn up, the legal position is still that two appeals have to be filed. Upon failure, res judicata would apply as per Section 11 CPC.



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(vii) Separate appeal and separate Court fee has to be paid challenging the decision on counter claim and therefore, the appeal ought to be dismissed which cannot be rectified at this stage, as the findings on the counter claim has attained finality and amounts to res judicata.

7. The learned counsel for the respondent/defendant, in support of his contentions, has placed reliance upon the following judgments:

- (i) ***Rajni Rani v. Khairati Lal [(2015) 2 SCC 682],***
- (ii) ***Premier Tyres Ltd. v. Kerala State Road Transport Corporation [1993 Supp (2) SCC 146],***
- (iii) ***Vediammal and Ors. V. M.Kandasamy and Others [(1997) 1 MLJ 529],***
- (iv) ***Rajeswari v. Perumal [2019 (1) CTC 781],***
- (v) ***KV Bhakthavatsalam and Others v. Pannalal Basha [(2020) 3 MLJ 665],***



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- (vi) ***Mathew v. Rajan - 2016 SCC OnLine Ker 2108,***
- (vii) ***Ramesh Chand v. Om Raj and Ors. [2022 SCC Online HP 2094],***
- (viii) ***Suresh Kumar v. Maala Ram [2016 SCC Online P&H 3603],***
- (ix) ***Sheodan Singh v. Daryao Kunwar [AIR 1966 SC 1332],***
- (x) ***Sri Gangai Vinayagar Temple v. Meenakshi Ammal [(2015) 3 SCC 624], and***
- (xi) ***Daryas Bamanshah Medhora v. Nariman Bamansha Medhora [AIR 2002 Guj 166].***

8. We have anxiously considered the rival submissions and also perused the entire materials available on record.

9. The following issues arise for consideration in this appeal:

- (i) Whether the appellant / plaintiff extended loan to the respondent / defendant for a sum of Rs.12,00,00,000/-



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- (ii) Whether the sum of Rs.12,00,00,000/- was paid by the appellant / plaintiff to the respondent / defendant towards consideration for the assignment of distribution rights for the movies Kaala in Malaysia?
- (iii) Whether the appellant / plaintiff is entitled to the sum of Rs.23,70,05,222/- with interest as prayed for in the plaint?
- (iv) Whether it is mandatory to file separate appeals as against the common judgment / decree passed in a suit and counter claim?
- (v) If the suit claim and counter claim are disposed of by a common judgment, and if one of the judgments is not appealed against, whether the principle of res judicata would apply?
- (vi) If so, whether separate Court Fees is payable for separate appeals?
- (vii) Whether this appeal is to be allowed or not?
- (viii) To what other relief the parties are entitled to?



WEB COPY 10. Points (i) to (iii):

10.1. In this case, the appellant / plaintiff has filed the main suit for recovery of money for the sum of Rs.23,70,05,222/- with interest at the rate of 30% per annum. According to the appellant / plaintiff, the appellant / plaintiff Company entered into an agreement with the respondent / defendant for exhibition and distribution rights for the movie titled “2.O” for the territory of Malaysia for a sum of Rs.20,00,00,000/- on 17.12.2017. Since there was an abnormal delay, which was unexpected, the appellant / plaintiff Company preferred cancellation or revival of the agreement. After a series of meetings and discussions, the appellant / plaintiff and the respondent / defendant, the respondent / defendant expressed that they need more money to meet the pre-production expenses to complete the movie. Hence, there was a delay. The respondent / defendant approached the appellant / plaintiff for funding and the appellant / plaintiff also offered for funding for a sum of Rs.20,00,00,000/- with interest and the respondent / defendant agreed to pay interest at the rate of 30% per annum for the sum of Rs.20,00,00,000/- due to the abnormal delay. The appellant / plaintiff had paid a sum of



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Rs.12,00,00,000/- to the respondent / defendant and they agreed to pay interest at the rate of 30% per annum. In total, the respondent / defendant received a sum of Rs.32,00,00,000/- for the production of the movie titled “2.O”. The accrued interest till the release of the said movie i.e.29.11.2018 would come to a sum of Rs.38,92,83,334/-. As on date of release of the movie 2.O, after deduction of Rs.20,00,00,000/-, the remaining amount comes to Rs.18,92,83,334/-.

10.2. Subsequently, before the release of the movie 2.O, a Memorandum of Understanding was entered into between the appellant / plaintiff and the respondent / defendant for the exhibition and distribution of the upcoming film “Kaala”. For the said movie, the sale amount was fixed and worked out with the formula of exhibiting the movie and upon the generated collections, less expenses and 10% of distribution charges, shall raise invoice in the name of the appellant / plaintiff to remit the proceeds after reconciliation of the accounts. As per the above said formula, Rs.12,00,00,000/- is due for the respondent / defendant. The film titled “Kaala” was released on 06.06.2018 and final cost of Kaala



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was fixed at Rs.2,70,47,521. The respondent / defendant has not raised any invoice for the said amount as interest has mented for the adjustment of the advance made by the appellant / plaintiff. As per the formula worked out, the respondent / defendant had released another movie titled “Chekka Chivanda Vaanam” on 27.09.2018 through the appellant / plaintiff in the territory of Malaysia. Final collection for the said movie is Rs.1,50,00,000/- and the invoice was raised for the said amount by the respondent / defendant and accordingly, the accounts were reconcialiated between the parties. Again as per the same formula, the movie titled “Vada Chennai” was released in the terriotry of Malaysia on 17.10.2018 through the appellant / plaintiff and the cost was fixed at Rs.60,64,744/-. The respondent / defendant raised invoice for Rs.75,00,000/-. The appellant / plaintiff agreed to consider the excess amount of Rs.14,35,256/- treating it towards advance for the account. Eventually, it was decided to fix the cost of Rs.60,64,744/- be deducted from the interest payable by the respondent / defendant.



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10.3. On 29.12.2018, the movie “2.O” was released in the territory of Malaysia and the appellant / plaintiff had incurred huge loss. The respondent / defendant has to pay a sum of Rs.8,92,83,334/- towards the interest on Rs.20,00,00,000/- and principal and interest for Rs.12,00,00,000/-. Again as per the previous formula, the respondent / defendant released another movie titled “Maari-II” on 21.12.2018 through the appellant / plaintiff in the territory of Malaysia and the respondent / defendant raised invoice for Rs.1,50,00,000/- and the same was settled to the appellant / plaintiff for interest. Subsequently, on 01.02.2019, another movie titled “Vandha Rajavathan Varuven” was released on the same formula and the respondent / defendant raised invoice for a sum of Rs.69,46,644/- and the same was also settled towards interest to the appellant / plaintiff. After release of the movie titled “2.O”, the respondent / defendant assured to settle the same amount with interest at the rate of 30% per annum to adjust the amount in the upcoming movie titled “Darbar”. But, the respondent / defendant is negotiating with some other persons to give the territorial rights in Malaysia for the film titled “Darbar”.



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After reconciliating the amount in total, the respondent / defendant is liable to pay a sum Rs.23,70,05,222/-.

10.4. According to the respondent / defendant, their Company is a reputed Company and has no need to avail any loan from the appellant / defendant. While to distribute the rights for the movies titled “2.O” and “Kaala” were in the model of out right assignment for a period of ten years, because, they were Rajni Kanth's movies, the distribution rights of the other movies, such as, “Chekka Chivanda Vaanam”, “Vada Chennai”, “Maari-II” and “Vanda Rajavathan Varuven” were based on the amounts realized and decided by the appellant / plaintiff. The appellant / plaintiff had made huge profits from various movies, for which, they had received rights, but have failed to pay amounts to the respondent / defendant. As on date, the appellant / plaintiff is due and liable to pay a sum of Rs.1,58,66,964/- to the respondent / defendant. According to the statement of the appellant / plaintiff, the date of release of the movie titled “2.O” was on 29.11.2018 and the appellant / plaintiff was required to make a payment of Rs.20,00,00,000/- as per the agreement dated 11.12.2017. At the



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time when the movie “Kaala” was likely to be released earlier than the movie titled “2.O” and since the appellant / plaintiff wanted rights in respect of this movie as well, the appellant / plaintiff requested that a sum of Rs.12,00,00,000/- from the amounts already paid for the movie titled “2.O” be used towards the consideration of the movie titled “Kaala”. On 22.11.2018, a sum of Rs.5,00,00,000/- and on 28.11..2018 a sum of Rs.2,00,00,000/- were paid by the appellant / plaintiff as per the agreement dated 11.12.2017. This is apparent even from the statement provided by the appellant / plaintiff in para 15 of the plaintiff. Even as per Para 15 of the plaint, a sum of Rs.13,33,003/- is still due and payable to the respondent / defendant. Because of the appellant / plaintiff's default, the respondent / defendant decided not to provide rights to the appellant / plaintiff for the territory of Malaysia for the subsequent movies titled “Kaappan” and “Darbar”. The present suit is only because of the appellant / plaintiff is aggrieved about lossing the same.

10.5. In order to prove the case of the appellant / plaintiff, they have not examined any witness and only marked documents



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Exs.P1 to P31 and on the side of the respondent / defendant, they have also not examined any witness and only marked documents Exs.D1 to D5.

10.6. In this case, both sides have not adduced oral evidence and only marked exhibits. Witnesses have to be adduced by the parties on the issues. But, unfortunately, in this case, without examining the witness only marked documents and thereafter, both parties filed written arguments and thereafter, the learned Single Judge framed the issues based on the draft issues filed by the both parties.

10.7. The learned Single Judge based on the documents marked on either side passed the Judgment dismissing the suit and partly allowing the counter claim made by the respondent / defendant. It is well settled law that mere marking of documents is not sufficient to prove the contents of the documents. In this case, though both sides marked documents, no oral evidence was adduced to prove the contents of the documents. Further, in this case, both parties filed affidavits of admissions / denials of



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documents produced by the counter party. Upon examining the same, this Court directed the parties to appear before the learned Additional Master for marking documents and the documents were marked. Even as per Ex.P1 – Agreement, the amount of Rs.20,00,00,000/- was fixed for exhibition and distribution in respect of the movie titled “2.O”. Exs.P2 to P6 are receipts for the payments made on various dates. But, there is no reference as to for what purpose those payments were made to the respondent / defendant. In Ex.P7 – Memorandum of Agreement, in respect of the movie titled “Kaala”, no sale price was fixed through the said document. Therefore, though through Exs.P8 to P11 payments were made, but there is no reference as to for what purpose those payments were made.

10.8. The appellant / plaintiff also filed other documents i.e. invoices raised by the respondent / defendant and e-Mail communications. But, the suit filed by the appellant / defendant by alleging that he paid a sum of Rs.12,00,00,000/- to the respondent / defendant towards loan and Rs.20,00,00,000/- was paid for distribution of the movie titled “2.O” and due to the delay



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in releasing the said movie, the respondent / defendant agreed to pay interest at the rate of 30% per annum. But, in order to prove the same, no oral evidence was adduced and no document was produced by the appellant / plaintiff. Moreover, the appellant / plaintiff failed to state the specific date of payment to the respondent / defendant either in the plaint or in the evidence. Though the appellant / plaintiff has produced the documents Exs.P1 to P31, he failed to examine any witness to explain about the documents and the payments made through those documents. It is well settled law that the appellant / plaintiff has to prove his case. The respondent / defendant has also not examined any witness and only marked Exs.D1 to D5. According to the respondent / defendant, the appellant / plaintiff paid a sum of Rs.22,00,00,000/- with break up of Rs.20,00,00,000/- for the movie “2.O” and Rs.2,00,00,000/- for the movie “Kaala” and a sum of Rs.12,00,00,000/- was deducted for the movie “Kaala” and the remaining Rs.10,00,00,000/- would be adjusted in future. But, in Exs.D1 and D2, no signature is found and to prove the documents, no witness was examined, thereby the respondent / defendant failed to prove his defence. Though the respondent / defendant



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10.9. As per Section 101 of the Indian Evidence Act, 1872, Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

10.10. In this case, the appellant / plaintiff has filed the suit for recovery of money as against the respondent / defendant and the burden of proof lies on the appellant / plaintiff to prove his case. But, he has not examined any witness on his side to prove his claim. Therefore, from the above, it is clear that the appellant / plaintiff failed to prove his case and thereby, he is not entitled to recover the suit amount from the respondent / plaintiff. Accordingly, the **points (i) to (iii) are answered.**



11. Points (iv) to (vi):

11.1. A Counter-claim is “a claim made by the defendant in a suit against the plaintiff”. It is an independent claim. It is separable from the plaintiff’s claim. It is enforceable by a cross-action in favour of the defendant. Before 1976, there was no provision regarding the counterclaim in the Code of Civil Procedure.

11.2. In order to prevent multiplicity of proceedings, the Law Commission of India favoured the conceding of a right to make a counter claim to the defendant. This right was in addition to a counter-claim in the same suit. Counter-claim result in the following advantages:-

- i) Saving the time of the courts, particularly in the context of huge pendency of cases over a long period of time;
- ii) Eliminate the inconvenience of the parties to filing fresh litigation, on the issues which could be well-resolved in the



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present suit itself; This would also result in the avoidance of multiplicity of proceedings and

- iii) Help in the early disposal of cases which otherwise, would have been inordinately delayed.

11.3. In view of the weighty reasons that prevailed then, an Amendment Act of 1976 to CPC made a provision for counter-claims. Such a counter-claim may defeat the relief sought by the plaintiff and thus this can be viewed as a “crossaction”. Another factor that weighed with the Government in enacting the Amendment of 1976 was the ruling of the apex court that right to make a counter-claim be made statutory. Though the Government acted after a lapse of 12 years for acting on the ruling of the apex court, it has served a landable purpose in achieving the objectives such as avoidance of multiplicity of proceedings and to expedite the course of justice and give justice to both the parties to the suit, though the counter-claims can be set up in respect of a claim for which the defendant can file a separate suit. The court, due to



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liberal construction, considered the counter claim as a plaint in a crosssuit and hear the original suit and counter claim together and give its decision, provided the counter-claim is properly stamped.

11.4. The specific provision made for counter-claims has been discussed in detail in Order 8 Rule 6A(1) of CPC. This enables a defendant to set up by way of counter-claim against the claim of the plaintiff any right or claim in respect of action accruing to the defendant against the plaintiff either before or after filing of the suit but before the defendant has delivered his defence or before the time fixed for delivery of his defence has expired.

11.5. It is also imperative to appreciate the scheme relating to counterclaim, which has been introduced by Civil Procedure Code (Amendment) Act 104 of 1976 with effect from 01.02.1977. Order 8 Rule 6-A CPC deals with counterclaim by the defendant, which reads as under:

"Order 8 Rule 6A. Counter-claim by defendant.

(1) ...

(2) Such counter claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a



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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.”

11.6. On a reading of the aforesaid provisions, it is quite obvious that a counterclaim preferred by the defendant in a Suit is in the nature of a cross-suit and by a statutory command, even if the suit is dismissed, counterclaim shall remain alive for adjudication. For making a counterclaim entertainable by the Court, the defendant is required to pay the requisite court fee on the valuation of the counterclaim. The purpose of the scheme relating to counterclaim is to avoid multiplicity of proceedings. When a counter claim is dismissed on being adjudicated on merits, it forecloses the rights of defendant. As per Order 8 Rule 6-A(2) CPC, the Court is required to pronounce a final judgment in the same suit both on the original claim and also on the counterclaim. The seminal purpose is to avoid piecemeal adjudication.



11.7. The effect of a counter-claim may be as follows:-

- i) it has the effect of a cross-suit and the court can pronounce a final Judgment both on the original claim and the counterclaim;
- ii) the counter-claim of the defendant will be treated as a plaint;
- iii) in answer to the counter-claim, the plaintiff has the right to file a written statement;
- iv) the counter-claim will be decided on merits, even if plaintiff's suit is stayed, dismissed, discontinued or withdrawn;
- v) the defendant's right to get a decree in respect of a counterclaim claimed in the written statement is in way effected by the suit of the plaintiff;
- vi) in the event of the plaintiff not filing a reply to the counterclaim, the court may pronounce Judgment against the plaintiff in respect of such counter-claim or make such order in respect of counter-claim, as it thinks fit;



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- vii) counter-claim of the defendant shall be treated as a plaint and the rules governing the plaints shall apply;
- viii) reply filed by the plaintiff in answer to a counter-claim shall be treated as a written statement. The rules applicable for the written statement shall apply to such replies;
- ix) Counter-claim is substantially a cross-action;
- x) Counter-claim need not arise out of same transaction;
- xi) Counter-claim enables the defendant to enforce the claim against the plaintiff as an independent action;
- xii) In a counter-claim, the amount need not be recoverable on the date of the suit filed by the plaintiff but may be recoverable on the date of the written statement. For this purpose the defendant may amend the written statement with the leave of the court; and



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xiii) When the defendant claims an excess amount than the suit amount of the plaintiff, the excess amount will be treated as a counter-claim and the rules relating to counterclaim shall apply to the excess amount claimed by the defendant than the suit amount claimed by plaintiff, subject to the pecuniary jurisdiction of the Court;

11.8. The Hon'ble Apex Court in ***Rajni Rani and another v. Khairati Lal [(2015) 2 SCC 682]*** held as under:

"12. From the aforesaid enunciation of law, it is manifest that when there is a conclusive determination of rights of parties upon adjudication, the said decision in certain circumstances can have the status of a decree. In the instant case, as has been narrated earlier, the counterclaim has been adjudicated and decided on merits holding that it is barred by principle of Order 2 Rule 2 CPC. The claim of the defendants has been negatived. In Jag Mohan Chawla v. Dera Radha Swami Satsang [(1996) 4 SCC 699] dealing with the concept of counterclaim, the Court has opined thus: (SCC p. 703, para 5)



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“5. ... is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection (sic protraction), the legislature intended to try both the suit and the counterclaim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counterclaim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit.”

13. *Keeping in mind the conceptual meaning given to the counterclaim and the definitive character assigned to it, there can be no shadow of doubt that when the counterclaim filed by the defendants is adjudicated and dismissed, finality is attached to it as far as the controversy in respect of the claim put forth by the defendants is concerned. Nothing in that regard survives as far as the said defendants are concerned. If the definition of a decree is appropriately understood it conveys that there has to be a formal expression of an*



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adjudication as far as that court is concerned. The determination should conclusively put to rest the rights of the parties in that sphere. When an opinion is expressed holding that the counterclaim is barred by principles of Order 2 Rule 2 CPC, it indubitably adjudicates the controversy as regards the substantive right of the defendants who had lodged the counterclaim. It cannot be regarded as an ancillary or incidental finding recorded in the suit.

14. *In this context, we may fruitfully refer to a three-Judge Bench decision in Ram Chand Spg. & Wvg. Mills v. Bijli Cotton Mills (P) Ltd. [AIR 1967 SC 1344] wherein Their Lordships were dealing with what constituted a final order to be a decree. The thrust of the controversy therein was that whether an order passed by the executing court setting aside an auction-sale as a nullity is an appealable order or not.*

...

16. *We have referred to the aforesaid decisions to highlight that there may be situations where an order can get the status of a decree. A court may draw up a formal decree or may not, but if by virtue of the order of the court, the rights have finally been adjudicated, irrefutably it would assume the status of a decree. As is evincible, in the case at hand, the counterclaim which is in the nature of a cross-suit has been dismissed. Nothing else survives for the defendants who had filed*



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the counterclaim. Therefore, we have no hesitation in holding that the order passed by the learned trial Judge has the status of a decree and the challenge to the same has to be made before the appropriate forum where appeal could lay by paying the requisite fee. It could not have been unsettled by the High Court in exercise of the power under Article 227 of the Constitution of India. Ergo, the order passed by the High Court is indefensible."

11.9. In *Premier Tyres Ltd. v. Kerala State Road Transport Corporation* [1993 Supp (2) SCC 146], wherein it was held that where two connected suits are tried together and findings recorded in one suit became final in absence of appeal, appeal preferred against the finding recorded in the other suit would be barred by *res judicata*. Effect of non-filing of appeal against a judgment or decree is that it becomes final. This finality can be taken away only in accordance with law. Same consequences follow when a judgment or decree in a connected suit is not appealed from. Thus the finality of finding recorded in the connected suit, due to non-filing of appeal, precluded the Court from proceeding with appeal in the other suit.



11.10. In ***Vediammal v. M.Kandasamy* [(1997) 1 MLJ 529]**, it was held that if the counter claim is treated as a Suit and the same is disposed of by a common judgment and if one of the judgements is not appealed against, the principle of res judicata has to be applied. It is useful to refer to the relevant portions of the said judgment as under:

“27. From the above decisions, the following principles emerge:

A counter-claim is really a suit, though the same is taken in the written statement. Just as a suit is filed by the plaintiff, defendant seeks a relief against the plaintiff on a cause of action which he has against the plaintiff. It is an independent cause of action which could also be agitated in a separate suit. It is to avoid multiplicity of proceedings, defendant is given liberty to file a counter-claim and get adjudication. Issues are suggested in both the original claim as well as in the counter-claim, and both are disposed of by a common judgment (Order 8, Rule 6-A(2), C.P.C. says that there can be a final judgment in the same suit, both on the original claim and counter-claim). In common parlance, 'common judgment' means, 'decision arrived simultaneously in more than one suit tried together.' In



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view of the legal position under Order 8, Rule 6-A, [C.P.C](#), a counter-claim or set-off can be made in many forms in a suit. But they need not be given separate numbers. The counter-claim is also said to be a weapon on evidence and enables the defendant to enforce the claim against the plaintiff as effectively as an independent action. As stated earlier, it is an enabling provision which gives a right to the defendant that instead of filing an independent action, he can seek that relief in a suit filed by plaintiff against him. Originally, there was a doubt whether the counter-claim filed in a suit for recovery of money and whether there should be nexus to the cause of action on which the suit is instituted. The legal position is now settled in view of the judgment reported in [Shri Jag Mohan Chawla v. Dera Radha Swami Satsang J.T.](#) (1996) 5 S.C. 428, wherein their Lordships have held thus:

...The counter-claim could be treated as a cross-suit and it could be decided in the same suit without relegating the parties to a fresh suit. It is true that in money suits, decree must be conformable to Order 20, Rule 18, [C.P.C](#). but the object of the amendments introduced by Rules 6-A to 6-G are conferment of a statutory right to the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In Sub-rule (1) of Rule 6-A, the language is so couched with



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words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject-matter of an independent suit. Thereby, it is not longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counterclaim expressly is treated as a cross suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court-fee thereon. Instead of relegating the defendant to an independent suit, to avoid, multiplicity of the proceeding and needless protection, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause



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of action that has accrued to him even though it is independent of the cause, of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit....

The said decision has been subsequently followed by the Bombay High Court in the decision reported in *Hemraj v. Yamunabai* (1996) 2 Mah.L.J. 844. From the judgment of the Supreme Court, it is clear that the scope of a counter-claim is in the nature of a cross-suit for all purposes.

28. This view of mine is supported by the decision reported in *Shivkali Bai v. Meera Devi* 1991 M.P.L.J. 102, wherein a learned Judge of that High Court held thus:

Counter-claim being in the nature of cross-suit, is not affected by the dismissal of plaintiff's suit. The counter claim has to be disposed of on merits. Therefore, the dismissal of plaintiff's suit on the ground of non-joinder of necessary party would not affect the counter claim of the defendant.

The only difference is, instead of filing two suits having two registered numbers, relief is sought for in the same suit by both plaintiff and defendant. **The**



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inference is irresistible therefore, that a counter-claim will be a suit. It must have a cause of action and that cause of action can be independently enforced. Necessary court-fee must be paid on the relief sought for.

29. If the counter-claim is treated as a suit, and the same is disposed of by a common judgment, and if one of the judgments is not appealed against, the principle of res judicata has to be applied. For the definition of 'former suit' we need look into only Explanation 1 to [Section 11](#) of the Code of Civil Procedure. If the decision in one suit has become final in which the issue which has to be decided in appeal was heard and finally decided, the connected suit cannot be appealed against, for, the same is barred by res judicata I need only refer to a very recent decision of the Supreme Court reported in [Premier Tyres Limited v. Kerala State Road Transport Corporation](#). In that case, their Lordships considered a similar question in paragraph 3 onwards, which reads thus:

The validity of this finding has been assailed by Shri Raja Ram Aggarwal, the learned Senior advocate appearing on behalf of the appellant. It is urged that [Section 11](#) of the Civil Procedure Code does not apply as such. According to him since both the suits were connected and decided by a common order the issue in



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*neither suit can be said to have been decided in a former suit. Therefore, the basic ingredient of [Section 11](#) of the C.P.C. was not satisfied. The submission derives some support from observations in *Narhari v.Shanker* that, veven when there are two suits it has been held that decision given simultaneously cannot be a decision in the former suit." But this decision was distnugished in [Sheodan Singh v. Smt. Daryao Kunwar](#) as it related to only one suit, therefore, the observations extracted above were not relevant in a case where more than one suit were decided by a common order. The court further held that where more than one suits were filed together and main issues were common and appeals were filed against the judgment and decree in all the suits and one appeal was dismissed either as barred by time or abated then the order operated as res judicata in other appeals.*

In the present case there were different suits from which different appeals had to be filed. The High Court's decision in the two appeals arising from Suit Nos.77 and 91 was undoubtedly earlier and therefore the condition that there should have been a decision in a former suit to give rise to res judicata in a subsequent suit was satisfied in the present case. The contention that there was no former suit in the present case must therefore fail.



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In *Ramagya Prasad Gupta v. Murli Prasad* an effort was made to get the decision in *Sheodan Singh* reconsidered. But the Court did not consider it necessary to examine the matter as the subject-matter of two suits being different one of the necessary ingredients for applicability of *Section 11* of the C.P.C. were found missing.

Although none of these decisions were concerned with the situation where no appeal was filed against the decision in connected suit but it appears that where an appeal arising out of connected suit is dismissed on merits the other cannot be heard, and has to be dismissed. The question is what happens where no appeal is filed, as in this case from the decree in connected suit. Effect of non-filing of appeal against a judgment or decree is that it becomes final. This finality can be taken away only in accordance with law. Same consequences follow when a judgment or decree in a connected suit is not appealed from. Mention may be made of a Constitution Bench in *Badri Narayan Singh v. Kamdeo Prasad Singh*. In an election petition filed by the respondent a declaration was sought to declare the respondent as the elected candidate. The tribunal granted first relief only. Both appellant and respondent filed appeals in the High Court. The appellant's appeal



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was dismissed but that of respondent was allowed. The appellant challenged the order passed in favour of respondent in his appeal. It was dismissed and preliminary objection of the respondent was upheld. The court observed, We are therefore of opinion that so long as the order in the appellant's Appeal No. 7 confirming the order setting aside his election on the ground that he was a holder of an office of profit under the Bihar Government and therefore could not have been a properly nominated candidate stands, he cannot question the finding about his holding an office of profit, in the present appeal, which is founded on the contention that finding is incorrect.

Thus the finality of finding recorded in the connected suit, due to non-filing of appeal, precluded the court from proceeding with appeal in other, suit. In any view of the matter the order of the High Court is not liable to interference.”

11.11. A Division Bench of Himachal Pradesh High Court in the decision in ***Ramesh Chand v. Om Raj and Others [2022 SCC Online HP 2094]***, after considering the various decisions of the Hon'ble Supreme Court, in the penultimate paras held as under:

“42.The principles deducible from the afore-discussed law can be summarized as follows:



(i) When two suits are consolidated and tried together with common issues framed and common evidence led by the parties, resulting in a common judgment and decree, the same can be subjected to challenge by way of a single appeal at the instance of the aggrieved party;

(ii) Where a single appeal is filed questioning the judgment and decree passed in two suits, which were consolidated and decided by a common judgment, decision of such single appeal, by a common judgment, reversing or modifying the claim in one suit out of the two, can be challenged by the aggrieved party also, in a single appeal.

(iii) When two suits though not consolidated but are decided by a common judgment, resulting into preparation of two separate decrees, the aggrieved party would be required to challenge both of them by filing separate appeals;

(iv) When both the suit and the counter claim are decreed by a common judgment, regardless of whether separate decree has been prepared in the counter claim, both would be required to be challenged by separate appeals;

(v) In a case where two separate appeals are required to be filed against judgment of the suit and the counter claim and if appeal is filed only against one and



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not against the other, non filing of appeal against such judgment and decree would attach finality thereto and would attract not only the principle of resjudicata but also waiver and estoppel and the judgment and decree not appealed against would be taken to have been acquiesced to by the party not filing appeal;

(vi) When however, two appeals are filed against a common judgment passed by the trial Court, both by the plaintiff and the defendant, and are disposed of by the first appellate Court by modifying / reversing / affirming judgment of the trial Court, the aggrieved party, would be required to challenge both by two separate appeals, in absence of which, non-filing of appeal against one shall attract bar of the principles of res-judicata against another.

(vii) Where more than one appeals are required to be filed or are filed and one or more of them are dismissed for default, delay or any other similar reason, any such situation would attract res judicata and such dismissal would satisfy the requirement of appeal being heard and finally decided on merits “in a former suit” for the purpose of attracting principles of res judicata.”

11.12. In the light of the aforesaid decisions, it can be easily concluded that counter claim is in the nature of a cross-suit



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for all purposes, having a cause of action that can be independently enforced and necessary court-fee has to be paid on the relief sought for, both in the suit stage as well as in the appellate stage separately. When the suit and counter claim are disposed of by a common judgment, separate appeals have to be filed by the parties and failure to file appeal on the common judgment passed either as against the suit or the counter claim would result in attaining finality and the doctrine of *res judicata* would apply. Therefore, all the aforesaid **Points (iv) to (vi) are answered accordingly** and the preliminary objection raised by the respondent / defendant holds good and the appellant/plaintiff has to file separate appeals as against rejection of the suit claim filed by him as well as partly allowing of the counter claim filed by the respondent/defendant by paying separate Court Fees. The appellant / plaintiff has filed the present appeal only as against the main suit for the relief of recovery of money for the sum of Rs.23,70,05,222/-. Therefore, this Court has passed Judgment in the appeal filed by the appellant / plaintiff for the main suit only.



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WEB COPY **12. Point (vii):**

12.1. The appellant / plaintiff has filed the suit for recovery of money as against the respondent / defendant and this Court in the previous points have decided that the appellant / plaintiff failed to prove his case and therefore, he is not entitled to the relief as prayed for in the suit. The Trial Court also, in its Judgment, elaborately discussed about the documents adduced on either side and fairly came to the correct conclusion and dismissed the suit by a reasoned Judgment. We find no infirmity or perversity in the Judgment and Decree passed by the Trial Court and the same do not warrant interference of this Court. Therefore, this appeal has no merits and deserves to be dismissed. Accordingly, **Point (vii) is answered.**

13. Point (viii):

13.1. In view of the above discussions, the appellant / plaintiff is not entitled to any relief and hence, this appeal is liable to be dismissed. **Accordingly, Point (viii) is answered.**



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14. In the result, this original side appeal is dismissed and the Judgment and Decree, dated 07.06.2022, passed in C.S.No.735 of 2019, on the file of this Court, are confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K., J.) (P.D.B., J.)

15.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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D.KRISHNAKUMAR, J.
and
P.DHANABAL, J.

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