

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**C.O. 1953 of 2025
Janardan Nirman Pvt. Limited
Vs.
Gannon Dunkerley and Co. Ltd.**

For the Petitioner : Mr. Sukanta Chakrabarty
Mr. Koushik Bhattacharyya
Mr. Biswajit Ghosh
..... advocates

For the Opposite Party : Mr. Partha Pratim Roy
Mr. Shubhojyoti Dutta
Ms. Anusuya Basu Dutta
Mr. Dyutiman Banerjee
Mr. Deb Kumar Deashi
Mr. Ronit Deyashi
.... advocates

Reserved on : 25.06.2025

Judgment on : 01.08.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the defendant /counter claimant and is directed against an order being no. 41 dated April 5, 2025 passed by the learned Judge Commercial Court at Alipore, District 24 Parganas (S) in Money Suit no. 12 of 2022 which has been subsequently renumbered as M.S. (Com) no. 55 of 2022.
2. By the order impugned, the application filed by the opposite party herein praying for vacating the order of ex-parte hearing of the counter claim stood allowed.

3. The opposite party filed a suit being Money Suit no. 12 of 2022 before the learned Judge, Commercial Court at Alipore praying for a decree for recovery of money together with interest thereon. The petitioner appeared in the said suit and filed its written statement along with counter claim. The opposite party filed its written statement to the counter claim which was also accepted by the learned Trial Judge. The Money Suit no. 12 of 2022 was subsequently renumbered as M.S. (Com) 55 of 2022.
4. The Money Suit was dismissed by an order dated May 12, 2023.
5. Petitioner filed an application praying for fixing a date for adjudication of counter claim.
6. The learned Judge of the Commercial Court restored the Money Suit by an order dated 16th May, 2023. Thereafter, the evidence of the defendant's witness was completed ex parte and the petitioner filed its notes of argument in respect of the counter claim on 20.11.2024. The learned Trial Judge fixed 22nd January 2025 for hearing the argument of the petitioner. On that date i.e., on 22nd January, 2025, the opposite party appeared before the Court and filed the application for vacating the order of ex-parte hearing of the counter claim against the plaintiff. Such application stood rejected by the impugned order.
7. Being aggrieved, by such order, the counter claimant has approached this Court.
8. Mr. Chakraborty learned advocate appearing for the petitioner contended that on 16.12.2022 the counter claim filed by the petitioner was accepted and on that very day the written statement to the counter claim filed by the opposite party was also accepted. He further contended that on and from 08.05.2023 and thereafter on consecutive dates till the final hearing of the argument of the counter claim on 22.01.2025 the opposite party did not take any steps either as a plaintiff in the Money Suit or as a defendant to the counter claim. He contended that since the Money Suit was dismissed due to non-appearance of the opposite party and nothing was mentioned about the counter claim in the said order, petitioner filed a put up petition for fixing a date for disposing of the counter claim and the learned Trial Judge restored the Money Suit on the case information system. He further contended that no valid explanation has been given in the vacating application as to why the opposite party did not appear on successive dates. He further contended that the hearing of the counter claim reached the final stage since the written notes of argument was already filed on November 20, 2024. He further contended that the application for vacating the ex-parte order was not maintainable as on the date of filing of the said application the suit had already crossed the stage of Order IX Rule 7. He placed reliance

upon a decision in the case of **Sangram Singh vs. Election Tribunal, Kotah and Another** reported at **AIR (1955) SC 425** in support of his contention that at the argument stage it would be improper to give an opportunity to the opposite party no. 1 to cross examine the witnesses of the petitioner and to adduce evidence. He further contended that at the argument stage, the application for vacating the order of ex parte herein is not maintainable. In support of such contention he placed reliance upon a decision of the Hon'ble High Court of Himachal Pradesh delivered on September 9, 2022 in **Civil Misc. Petition Main (Original) No. 263 of 2022** in the case of **Surender Kaur vs. Shri Jagtender**. Mr. Chakraborty contended that the learned Trial Judge allowed the opposite party to contest the counter claim by a totally non-speaking order and without mentioning the stage of contest which is against the statutory provision. Mr. Chakraborty further contended that there is no compulsion upon the Court to fix a separate date for ex-parte hearing in case the defendant happens to be absent without cause on the date already fixed for hearing of the suit. In support of such contention he placed reliance upon a decision of the Hon'ble Division Bench of this Court in **Biswanath Chakraborty vs. Bagala Chakraborty** reported at **AIR (2004) Cal 98**. Mr. Chakraborty further placed reliance upon a decision of the Hon'ble Supreme Court in **K. Valarmathi vs. Kumaresan** reported at **(2025) Online SC 985** in support of his contention that short circuit procedure to reach hasty outcomes is a unreasonable propriety of a overburdened judiciary.

9. Mr. Roy learned advocate appearing for the opposite party seriously disputed the contention raised by Mr. Chakraborty. He contended that the counter claim was not in proper form on the date of its restoration. He further contended that deficit court fee was paid by the petitioner only on 10.08.2023 i.e., after the counter claim had been restored and, therefore, on the day of restoration of the counter claim there existed no counter claim in the eyes of law. Mr. Roy distinguished the decision in the case **of Sangram Singh (supra)** by contending that in the case on hand the summons was never served upon the opposite party after restoration of the counter claim. He further contended that the counter claim was restored without giving any notice to the opposite party. In support of such contention he placed reliance upon the provisions of Order IX Rule 9 (2) of the Code of Civil Procedure. Mr. Roy placed reliance upon the decision of the Hon'ble Supreme Court in the case **of Vijay Kumar Madan vs. R.N. Gupta** reported at **(2002) 5 SCC 30** in support of his contention that the Court has the power to impose, cost and put the defendant on terms while directing that the proceedings be relegated back and reopened from the date wherefrom the same became ex-parte. Mr. Roy also placed reliance upon an order passed by this Court on 06.05.2025 in C.O. 772 of 2025 in the case of **Dev**

Sahitya Kutir Private Limited vs. Sri Sankar Mondal & ors. in support of his contention that a defendant is entitled to appear and participate in the proceedings as of right. Mr. Roy placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Rafiq and Another vs. Munshilal and Another** reported at **(1981) 2 SCC 788** in support of his contention that no party should suffer for inaction, deliberate omission or the misdemeanour of his agent or advocate. Mr. Roy contended that the person who was representing the company before the learned Trial Judge quit the company midway and for such reason the opposite party should not be made to suffer. He further contended that the learned Trial Judge upon being satisfied with the cause shown by the opposite party allowed the opposite party to contest the counter claim and this Court should not interfere with the impugned order.

10. Heard the learned advocates for the parties and perused the materials placed.
11. The opposite party herein filed the Money Suit praying for recovery of money together with interest thereon. The petitioner was contesting the said suit by filing a written statement along with the counter claim. The counter claim filed by the petitioner was accepted. The written statement to the counter claim filed by the opposite party herein was also accepted. The learned Trial Judge, by an order dated 11th May 2023, directed the opposite party to file show cause as to why the Money Suit shall not be dismissed. Neither did the opposite party file show cause nor took any step in the suit, and for such reason the learned Judge, Commercial Court at Alipore dismissed the Money Suit no. 12 of 2022 by an order dated 12th May 2023.
12. A counter claim shall have the same effect as a cross suit and the counter claim shall be treated as a plaint and governed by the rules applicable to plaints in view of order VIII Rule 6A of the Code of Civil Procedure. If in any case in which the defendant sets up a counter claim and the suit of the plaintiff is dismissed, the counter claim may nevertheless be proceeded with in view of Order VIII Rule 6D of the Code of Civil Procedure.
13. To the mind of this Court, the provisions of the Code of Civil Procedure shall apply for adjudication of the counter claim by treating the same as a cross suit.
14. The Money Suit filed by the opposite party stood dismissed by an order dated May 12, 2023 as the opposite party neither appeared on that date nor filed any show cause as directed by the order dated May 11, 2023.

15. On an application being filed by the petitioner for fixing a date for disposing of the counter claim, the learned Judge of the Commercial Court restored the Money Suit no. 12 of 2022 by an order dated 16th May 2023.
16. By the order dated 16th May, 2023 a date was fixed for case management hearing in respect of the counter claim.
17. In course of hearing of this Civil Revision Application, Mr. Chakraborty learned advocate for the petitioner filed the entire order sheet in connection with the suit and the counter claim. This Court finds that the Money Suit was restored for disposing of the counter claim without serving any notice upon the plaintiff/opposite party.
18. By the order dated 16th May, 2023 a date was fixed for hearing but it does not appear from the said order or from the subsequent orders that the opposite party was informed of the date of such hearing. It appears from the order sheet that the hearing of the counter claim proceeded ex-parte against the opposite party.
19. Order IX of the Code of Civil Procedure deals with the appearance of parties and the consequence of non-appearance. Order IX Rule 6(1)(a) of the Code of Civil Procedure states that where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then if it is proved that the summons was duly served, the Court may make an order that the suit be heard ex-parte.
20. Order IX Rule 7 of the Code of Civil Procedure lays down the procedure where defendant appears on the date of adjourned hearing and assigns good cause for previous non- appearance. It states that where the Court has adjourned the hearing of the suit ex parte, and the defendant at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.
21. There has been no amendment of the provisions laid down under Order IX Rule 7 of the Code of Civil Procedure by Commercial Courts Act, 2015. Therefore, the provisions of Order IX of the Code shall apply to a suit pending before the Commercial Court for adjudication of commercial disputes of specified value and matters connected therewith or incidental thereto.
22. In **Sangram Singh (supra)** on the date when the case was adjourned the counsel of the appellant therein appeared but he was not allowed to take part in the proceedings on the ground that the Tribunal was proceeding ex parte at that stage. An application for setting aside the ex parte proceeding

was filed which stood rejected. The order rejecting the prayer for setting aside the ex parte proceeding was challenged which also stood rejected and the order of rejection was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that Order IX Rule 6 (1) (a) is confined to first hearing of the suit and does not apply to subsequent hearings. The Hon'ble Supreme Court after analysing Rule 6(1) (a) of Order IX held that the expression "ex parte" merely means in the absence of the other party. It was further held that when the defendant has been served and has been afforded an opportunity of hearing, then, if he does not appear the Court may proceed in his absence. It was further observed that Rule 6(1)(a) authorises the Court to proceed in the absence of one of the parties.

23. While interpreting Rule 7 of Order 9, the Hon'ble Supreme Court held that the said Rule cannot be read to mean that the defendant cannot be allowed to appear at all if he does not show good cause and all it means is that he cannot be relegated to the position he would have occupied if he had appeared.
24. It was further held that Rule 2 of Order 17 applies when one or both of the parties do not appear on the day fixed for the adjourned hearing. In that event the Court is thrown back to Order IX. When it goes back to Order IX the Court is again empowered to proceed ex parte on the adjourned hearing. The Hon'ble Supreme Court held that right to proceed ex parte is a right which accrues from day to day because at each adjourned hearing the Court is thrown back to Order IX Rule 6.
25. The Hon'ble Supreme Court ***in Sangram Singh (supra)*** observed that though the defendant has the right to appear at an adjourned hearing, he has no right to set back the hands of the clock unless he can show good cause. Therefore, unless the defendant can show good cause he must accept all that has gone before and be content to proceed from the stage on which he comes in. The Hon'ble Supreme Court in Sangram Singh after analysing provisions of Order IX Rule 6, Order IX Rule 7 and Order XVII observed that if the defendant does not appear at the first hearing the Court can proceed ex parte. The decision in the case of Sangram Singh (supra) was pronounced at a point of time when Order IX Rule 6(1) (a) read as follows –

"Order IX Rule 6

(1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then- when summons duly served-(a) if it is proved that the summons was duly served the Court may proceed ex parte".

26. Clause (a) of Order IX Rule 6(1) was substituted by CPC (Amendment) Act 104 of 1976 with effect from 01.02.1977. By CPC (Amendment) Act 104 of 1976 in Clause (a) of Order IX Rule 6(1) of the Code of Civil Procedure the words “make an order that the suit be heard ex parte” have been substituted for the words “proceed ex parte”. Prior to the 1976 Amendment the Court was authorised to hear the suit ex parte by merely making a statement of fact in the order sheet that it was proceeding ex parte. However, under the present rule the Court has been authorised to proceed ex parte after making an order that “the suit be heard ex parte”.
27. The observation of the Hon’ble Supreme Court in **Sangram Singh (supra)** that if the defendant does not appear at the first hearing the Court can proceed ex parte was in the light of the provisions laid down in Order IX Rule 6 (1)(a) as it stood prior to the 1976 amendment. However, after the 1976 amendment the Court has been authorised to proceed ex parte either at the first hearing or on the day to which the hearing has been adjourned after making an order that “the suit be heard ex parte”.
28. Order IX Rule 7 starts with the expression “where the Court has adjourned the hearing of the suit ex parte”. The aforesaid expression fell for consideration before the Hon’ble Supreme Court in the case of **Arjun Singh vs. Maninder Kumar** reported in **AIR 1964 SC 993**. The Hon’ble Supreme Court held that the said expression assumes that there has to be a hearing on the date to which the suit stands adjourned. If the entirety of the “hearing” of the suit has been completed and the Court being competent to pronounce the judgment then and there, adjourns the suit merely for the purpose of pronouncing judgment under Order XX Rule 1, there is clearly no adjournment of the “hearing” of the suit for there is nothing more to be heard in the suit. The Hon’ble Supreme Court further held that on the terms of Order IX Rule 7, if the defendant appears on the adjourned date and satisfies the Court by showing good cause for his non-appearance on the previous day or days he may have the earlier proceedings recalled, “set the clock back” and have the suit heard in his presence. On the other hand, even if the defendant fails to show good cause, he is not penalised in the sense of being forbidden to take part in the further proceedings of the suit or whatever may still remain in the trial, only he cannot claim to be relegated to the position that he would have occupied at the commencement of the trial.
29. It was further held that once the hearing starts, the Code contemplates only two stages in the trial of the suit- (i) Where the hearing is adjourned or (ii) Where the hearing is completed.

30. Where the hearing is completed, the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order XX Rule 1 permits judgment to be delivered after an interval after the hearing is completed. The Hon'ble Supreme Court held that after the stage contemplated by Order IX Rule 7 is passed the next stage is only the passing of the decree.
31. The Hon'ble Supreme Court in **Vijay Kumar Madan (supra)** reiterated the proposition of law laid down in **Arjun Singh (supra)** that on an adjourned hearing, instead of Court having proceeded ex parte earlier the defendant is entitled to appear and participate in the subsequent proceedings as of right and an application under Order 9 Rule 7 is required to be made only if the defendant wishes the proceedings to be reflected back and reopen the proceeding from the date wherefrom they become ex parte so as to convert the ex parte hearings into bi-parte.
32. As to whether the Court has the power to impose costs and put the defendant on terms under Order IX Rule 7 of the Code fell for consideration before the Hon'ble Supreme Court in **Vijay Kumar Madan (supra)**. The Hon'ble Supreme Court held that the cost should be assessed as would reasonably compensate the plaintiff for the loss of time and inconvenience caused by relegating back the proceedings to an earlier stage and the terms which the Court may direct may take care of the time or mode of proceedings required to be taken pursuant to the Order under Rule 7. It was further held that how the terms are to be devised and made a part of the Order would depend on the facts and circumstances of a given case. The Hon'ble Supreme Court held thus-

"7. Power in the court to impose costs and to put the defendant-applicant on terms is spelled out from the expression "upon such terms as the court directs as to costs or otherwise". It is settled with the decision of this Court in Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993] that on an adjourned hearing, in spite of the court having proceeded ex parte earlier the defendant is entitled to appear and participate in the subsequent proceedings as of right. An application under Rule 7 is required to be made only if the defendant wishes the proceedings to be relegated back and reopen the proceedings from the date wherefrom they became ex parte so as to convert the ex parte hearings into bi-parte. While exercising power of putting the defendant on terms under Rule 7 the court cannot pass an order which would have the effect of placing the defendant in a situation more worse off than what he would have been in if he had not applied under Rule 7. So also the conditions for taking benefit of the order should not be such as would have the effect of decreeing the suit itself. Similarly, the court

may not in the garb of exercising power of placing upon terms make an order which probably the court may not have made in the suit itself. As pointed out in the case of Arjun Singh [AIR 1964 SC 993] the purpose of Rule 7 in its essence is to ensure the orderly conduct of the proceedings by penalizing improper dilatoriness calculated merely to prolong the litigation.”

33. The power of the Court to impose cost for the purpose of reopening the proceedings from the date when the suit became *ex parte* to convert it to *biparte* is well recognised.
34. In **Vijay Kumar Madan (supra)** the Hon’ble Supreme Court *inter alia* directed that such of the plaintiff’s witnesses as were not cross examined shall be recalled for cross examination and the parties shall have the liberty to lead such other evidence they proposed to do and while directing the suit shall be expeditiously heard and decided, the Trial Court was granted the liberty to refuse to grant unavoidable adjournment at the trial which may have the effect of delaying the suit.
35. It is now well settled that the purpose of Order IX Rule 7 is to properly conduct all the proceedings and the Court can pass directions for cross examination of plaintiff’s witness and to allow the parties to lead such other evidence as they proposed to do upon such terms that may be fixed by the learned Trial Judge.
36. In **Dev Sahitya Kutir Private Limited (supra)** this Court held that in a commercial suit, if the defendant appears on the adjourned date of hearing he is entitled to participate in subsequent proceedings as of right.
37. Mr. Chakraborty strenuously contended that the application for vacating the order of *ex parte* herein was not maintainable since the notes of argument have already been filed by the petitioner herein.
38. It appears from the order sheet that on November 20, 2024 the petitioner/ counter claimant has filed the notes of argument and the learned judge of the Commercial Court fixed 22.01.2025 for hearing on behalf of the defendant in respect of the counter claim. Record reveals that the opposite party filed the petition for vacating the order of *ex parte* hearing and appeared on the date when the hearing on behalf of the defendant was adjourned. Therefore, it cannot be said that the application for vacating the order of *ex parte* hearing was filed after the hearing was completed. In other words, the said application was filed on the date when the hearing of the suit stood adjourned. This Court holds that the application for vacating was filed at a point of time when the suit was still at the stage of Order 9 Rule 7 of the Code.

39. In ***Surender Kaur (supra)*** after conclusion of final arguments the application under Order IX Rule 7 of the Code of Civil Procedure was filed. On such facts it was held that an application for setting aside the ex parte order can only be entertained if it is filed before the conclusion of arguments. As observed hereinbefore, the application under Order IX Rule 7 has been filed in the case on hand on the day fixed for hearing on behalf of the counter claimant. The decision in the case of ***Surender Kaur (supra)*** being distinguishable on facts cannot come to the aid of the petitioner.
40. Mr. Chakraborty would strenuously contend that the cause shown by the plaintiff/opposite party herein in the application for vacating the order of ex parte herein cannot be said to be “good cause” as contemplated under Order IX Rule 7 of the Code of Civil Procedure.
41. From the Order sheets produced in course of hearing it does not appear that the date of first hearing or the date on which the hearing of the counter claim, after its restoration, was adjourned was intimated to the opposite party i.e., the defendant in the counter claim. That apart the order sheets also do not reflect that the court made an order that the suit be heard ex parte. To the mind of this Court, the Commercial Court could not have proceeded with the hearing of the counter claim before making an order that it would proceed ex parte.
42. From the order sheet it does not appear that any notice was served upon the opposite party prior to restoration of the Money Suit for deciding the counter claim.
43. In ***Sangram Singh (supra)*** it was held that our laws of procedure are based on the principle that, as far as possible, no proceeding in a Court of law should be conducted to the detriment of a person in his absence. An exception of the aforesaid principle has been carved out in a case where the defendant has been served and has been afforded an opportunity of appearing, then, if he does not appear, the Court may proceed in his absence.
44. Since the opposite party has not challenged the order restoring the money suit for the purpose of deciding the counter claim, this Court refrains from making any comment on the propriety of the said order. This Court, however, holds that after restoration of the money suit the opposite parties ought to have been intimated of the next date fixed for hearing of the counter claim. In the absence of any intimation of the date of hearing of the counter claim being given to the opposite party, it cannot be said that the opposite party had been afforded an opportunity of hearing.

45. The learned advocate for the petitioner, in course of his argument, could not demonstrate that the opposite party was intimated of the date fixed for hearing of the counter claim after restoration of the money suit. To the mind of this Court no opportunity had been afforded to the opposite party to appear on the date fixed for hearing of the counter claim. Therefore, the case on hand does not fall within the exception carved out in **Sangram Singh (supra)** wherein the Court may proceed in the absence of the defendant.
46. This Court is, therefore, of the considered view that the learned judge of the Commercial Court could not have proceeded with the hearing of the counter claim in the absence of the opposite party.
47. In the facts and circumstances of the case on hand, it cannot be said that the opposite party herein even after being intimated of the date fixed for the first hearing of the counter claim, after its restoration or the date of adjourned hearing chose not to appear. The non-appearance of the opposite party after the restoration of the counter claim cannot fall within the expression “defendant does not appear” used in Order IX Rule 6(1)(a) or “fail to appear” used in Order XVII Rule 2 of the Code of Civil Procedure.
48. For all the reasons as aforesaid, this Court holds that the learned Judge of the Commercial Court was right in allowing the opposite party to contest the counter claim. However, the opposite party was allowed to contest the counter claim subject to payment of cost in order to compensate the counter claimant. Since the opposite party herein has not challenged the impugned order, this Court refrains from making any observation as to whether it was a fit case for imposition of cost as a condition precedent for contesting the counter claim.
49. On a query of the Court, Mr. Chakraborty learned advocate for the petitioner could not point out any order made by the Court that the suit be heard ex parte. The money suit was restored for adjudication of the counter claim without notifying the plaintiff/ opposite party herein. Even after such restoration the petitioner/ opposite party herein was not intimated about the date fixed by the Court for hearing.
50. It appears from the record that the deposition of DW 1 was recorded by the learned Advocate Commissioner. However, the petitioner was not afforded any opportunity to cross examine the defendant witness no. 1. No opportunity was also given to the opposite party herein to adduce evidence. Thus, there had been serious affectation of the rights and privileges of the opposite party in the counter claim.
51. It is not in dispute that the opposite party herein has already filed its written statement against the counter claim. The entire proceedings on and from

May 16, 2025 till the date of appearance of the plaintiff on 22.01.2025 was conducted behind the back of the petitioner and, therefore, suffers from procedural irregularity.

52. Since the opposite party was not intimated of the date fixed for hearing of the counter claim, the opposite party cannot be faulted for not appearing on the previous dates of hearing prior to his appearance in the counter claim.
53. The question of assigning “good cause” for being relegated to the position as on the date when the counter claim became *ex parte* cannot arise in the case on hand as the opposite party was not intimated of the date fixed for hearing and also that the Court did not make any order that the suit be heard *ex parte*. It is not the case where the opposite party was afforded a chance to appear and did not avail himself of it. In other words, in a case of this nature, the proceedings has to be reopened from the date when the same became *ex parte* irrespective of the fact whether good cause has been shown or not.
54. In ***Biswanath (supra)*** an appeal was preferred from an order refusing to set aside the *ex parte* grant of letter of administration. The Hon’ble Division Bench held that the learned Trial Judge made no error in passing the *ex parte* judgment on the date fixed for passing of it, without putting it up to a further date for delivery of *ex parte* judgment. In the case on hand *ex parte* decree has not yet been passed. The said judgment being distinguishable on facts cannot come to the aid of the petitioner.
55. There is no quarrel to the proposition laid down in ***Rafiq (supra)*** that a party should not suffer for the inaction, deliberate, omission or misdemeanour of the learned advocate whom he has appointed to conduct his case. It is not the case of the opposite party that the learned advocate absented himself deliberately or intentionally. For such reason the said decision cannot be of any assistance for the purpose of deciding the case on hand.
56. In ***K. Valarmathi (supra)***, in a suit seeking declaration of title and consequential injunction, the respondents therein took out an application under Article 227 of the Constitution of India before the High Court praying for rejection of plaint.
57. In such a factual scenario, the Hon’ble Supreme Court observed that Civil Procedure Code is a self-contained Code and Order VII Rule 11 therein enumerates the circumstances in which the trial Court may reject a plaint and such rejection amounts to a deemed decree which is appealable under Section 96 of the Code. The Hon’ble Supreme Court held that such a statutory scheme cannot be upended by invoking supervisory jurisdiction of

the High Court under Article 227 of the Constitution of India to entertain a prayer for rejection of plaint.

58. The said decision being distinguishable on facts cannot come to the aid of the petitioner.
59. In view of the aforesaid discussion, this Court is not inclined to interfere with the order passed by the learned Judge, Commercial Court allowing the opposite party to contest the counter claim. In the written notes of argument the opposite party has stated that since the learned advocate for the petitioner refused to accept the cost the same was deposited in the form of a draft before the learned Trial Judge by a put up petition. It will be open to the learned Judge of the Commercial Court to pass consequential directions with regard to payment of cost as it may deem fit. The learned Judge, Commercial Court at Alipore shall proceed with the hearing of the Money Suit No. 12 of 2022 which has been renumbered as M.S.(Com) 55 of 2022 for disposing of the counter claim in the light of the observations made by this Court hereinbefore and in accordance with law.
60. With the above observations and directions CO 1953 of 2025 stands disposed of. There shall be no order as to costs.
61. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)