

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA No. GA/1/2023
A.P.O.T. No. 333 of 2023
A.P.O. No. 165 of 2023
Arising out of
G.A. No. 4 of 2023
CS/184/1989

RAJA KATRA PVT LTD.
VS
PRANAY CHAND MAHATAB AND ORS.

Present:-

The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE RAI CHATTOPADHYAY

For The Appellant : Mr. Dhruba Ghosh, Id. Senior Adv.
: Mr. Chayan Gupta, Adv.
: Mr. Aniruddha Agarwalla, Adv.
: Ms. Priyanka Garain, Adv.

For The Respondents : Mr. A. C. Kar, Sr. Adv.
: Mr. Anirban Kar, Adv.
: Mr. Munshi Ashiq Elahi, Adv.
: Ms. Snigdha Das, Adv.
: Mr. Rohit Mahato, Adv.
: Ms. Khusnuma Akhtar Ansari, Adv.

Heard On : **08.07.2025**
Judgment On : **10.07.2025**

1. An order of the Hon'ble Single Judge dated August 29, 2023, in G.A.No. 4 of 2023, passed in connection with CS No. 184 of 1989, is under challenge in the instant appeal. G.A.No. 4 of 2023 was an application filed by the appellant/plaintiff, praying

for rejection of the counter-claim of the defendant No. 6(x) in the suit. Several grounds were pleaded in the application as above to support the prayer made therein including a ground, that the counter-claim by the said defendant, is bellow the pecuniary jurisdiction of the Court. The other grounds pleaded inter alia are, that the counter-claim did not disclose any cause of action and the same is barred by law.

- 2.** After hearing the parties the Hon'ble Single Judge has dismissed G.A.No. 4 of 2023 on merit and placed the suit on board for framing of the issues.
- 3.** Thus being aggrieved the plaintiff/appellant has filed the instant appeal.
- 4.** The factual back ground leading to filing of this appeal may be elaborated a little in the following manner:
- 5.** The suit by the appellant/plaintiff being CS No. 184 of 1989 is for a decree for specific performance of the deed of lease dated March 14, 1938, to be precise, clause No. 1V(10) of the same. According to the plaintiff, after determination of the lease due to expiry of the period of validity of the said lease deed and in terms of clause No. 1V(10) thereof, the validity of the same is to be extended for a term of 31 years, commencing from March 16, 1989, at a monthly rent of Rs. 10,000/-. The appellant/plaintiff

has sought for the relief in the suit that a decree of declaration be passed, directing that the plaintiff is entitled to continue as the lessee of the premises for a term of 31 years commencing from March 16, 1989, at a monthly rent of. Rs. 10,000/-.

6. The respondent/defendant's written statement and counter-claim is that admittedly the period of lease and operation of the lease deed, have expired. Hence, his prayer is for eviction of the appellant/plaintiff. Also that, after expiry of the lease period, the said defendant has taken possession of the property, applied for sanction of plan and started construction over the area in the premises for which the plan has been sanctioned by the competent authority. The defendant submitted about depositing adequate court fees along with the written statement and counter claim of him.
7. Hence, followed the application by the plaintiff/appellant being G.A.No. 4 of 2023 to pray for rejection of the counter-claim of the defendant, which was dismissed by the Court, vide the impugned order as mentioned above.
8. The plaintiff/appellant is represented by Mr. Dhruba Ghosh, learned senior counsel. The defendant No. 6(x) is represented by Mr. A. C. Kar, learned senior counsel.

9. Mr. Ghosh, learned senior counsel for the appellant/plaintiff has submitted that in terms of the valuation of the counter-claim filed by the said respondent/defendant, the same ought not to have been considered by the Court, to be maintainable before it. That the counter-claim has been valued at Rs. 1,20,000/- (one lac and twenty thousand only) under section 7(xiii) of the West Bengal Court Fees Act 1970, which is much less than the pecuniary jurisdiction of the Court, as prevailing on the date of filing of the counter-claim, that is Rs. 10,00,000/- (ten lacs only). That the Hon'ble Single Judge has erred in not considering that due to lack of pecuniary jurisdiction, the counter-claim of the defendant would not be maintainable before the High Court.

10. It has further been stated that the appellant/plaintiff has been rendering property rent to the tune of Rs.10,000/- per month, since after expiry of the validity period of the lease. The same has been accepted by the respondent/defendant for a considerable period of time and most importantly, without any protest. Hence for the said reason, if not in the capacity of a lessee, the appellant/plaintiff has acquired the right of possession, in its capacity as a tenant in the said property and taking into consideration the quantum of rent paid by the appellant/plaintiff and accepted duly by the respondent/defendant, it can be construed that the

appellant/plaintiff should have been considered to be governed under the West Bengal Premises Tenancy Act, 1997.

11. Mr. Ghosh, learned senior counsel, for the appellant/petitioner has stated further that an action before the Court of law, if any, for eviction of his client, should mandatorily be preceded with a notice under section 6 of the said Act of 1997. That, otherwise an action for eviction of his client from the said premise is wholly bad in law and not maintainable in the eye of law, the applicant plaintiff having already assumed the role of a tenant in the said property. Also that, a counter-claim in the suit of the plaintiff, seeking the relief of eviction of the plaintiff, would thus not be maintainable. According to the appellant/plaintiff, the Hon'ble Single Judge has erred in considering as regards applicability of the provision under Order VI Rule 7 of the Code of Civil Procedure and the judgment relied on by the appellant/petitioner as well, that is *Eih Limited vs Nadia A Virji* reported in (2022) SCC Online SC 947. According to the appellant, the impugned order is erroneous and unlawful and is thus liable to be set aside. According to the appellant/plaintiff, the counter-claim of the defendant No. 6(x) in the suit is liable to be rejected for the reasons as above and that an order to that effect may be passed by this Court.

12. Mr. Kar, learned senior counsel, who is representing the respondent/defendant No. 6(x), has raised vehement objections

as regards the contentions and prayer of the appellant/plaintiff. It has been submitted that after determination of the lease upon expiry of the validity period of the lease deed and the same having not been extended any further, the appellant/plaintiff, which was the erstwhile lessee, became a mere trespasser in the demised premises. Admittedly also neither is there any lease deed registered any further between the parties, nor any agreement for tenancy has been entered into between them. Therefore, according to the respondent/defendant No. 6(x), his counter-claim challenging the right of a trespasser to be in possession of the property and his unlawful occupation over the property, is maintainable. Similarly, his prayer in the counter-claim for eviction of such trespasser, that is the appellant/plaintiff, is also maintainable. Mr. Kar, learned senior counsel has stated that the Hon'ble Single Judge has committed no wrong in holding in the impugned order, as the Court has done. Hence, he raises objection that any interference to the same by this Appellate Court, is at all warranted.

- 13.** According to the respondent/defendant the plaintiff has failed to discharge its statutory obligations as a lessee, by handing over possession of the property, at the point of time when the lease stood determined, whereas, he says that, it was obliged to do the same as per law. That, at a time when the validity period of the lease agreement was over and there was no fresh agreement entered into between the erstwhile lessor and the

lessee, which is an admitted position in the instant case, the law provides that the lessee has to hand over, peaceful and vacant possession of the lease hold premises, to the owner thereof. That, by not following the law as above, the plaintiff has acted illegally. In this regard Mr. Kar, learned senior counsel, has referred to a judgment of the Supreme Court in M/s Raptakosh Brett and Company Limited vs Ganesh Property, reported in AIR 1998 SC 3085.

- 14.** Mr. Kar, learned senior counsel has also relied on the judgment in Dutta and Associates and Another vs State of West Bengal and Others reported in AIR 1982 SC 225 and that in Lalit Mohan Dey vs Smt. Satadalbasini Dasi reported in AIR 1965 Cal 55, for similar proposition of law. He seeks dismissal of the appeal.
- 15.** The question of the counter-claim being not maintainable for the reason of being of lesser value than the lowest limit of the pecuniary jurisdiction of the Court, since touches the very root amongst the issues involved in this appeal, the same is first taken up for determination by this Court. As a matter of fact, if the appellant/plaintiff succeeds on the said point, the Court need not enter into the other points argued by either of the parties, on merit.

- 16.** The City Civil Court (Amendment) Act of 2013 [West Bengal Act XVIII of 2013], published vide notification No. 1552-L dated October 10, 2013], may be mentioned in this regard. In accordance with the amended *Second Schedule* vide the same, in *Column IV* thereof, the following has been provided:

“(a) in case the value of the suit exceeds rupees one crore, to the High Court at Calcutta;

(aa) in case the value of the suit does not exceed rupees one crore but exceeds rupees ten lakhs, to the City Civil Court established under section 3 of the City Civil Court Act, 1953 and the High Court at Calcutta, concurrently;

(b) in case the value of the suit does not exceed rupees ten lakhs but exceeds rupees sixty thousand, to the City Civil Court established under section 3 of the City Civil Court Act, 1953;”

- 17.** Hence, according to the said amended provision the High Court in its ordinary original civil jurisdiction shall entertain a suit, valuation of which exceeds Rs. 1 Crore, or entertain concurrently with the City Civil Court a suit, valuation of which does not exceed Rs. 1 Crore but exceeds Rs. 10 Lacs. Any suit valued up to Rs. 10 Lacs, shall remain outside the lower limit of the pecuniary jurisdiction of this Court.

- 18.** Having said so, the other pertinent fact is that the subject matter of the instant appeal is the counter-claim of the

defendant which the appellant/plaintiff wants to be set aside, but its prayer to that effect has been declined by the Court.

19. The provision for filing counter-claim by a defendant was introduced, for the first time, by the 1976 Amendment to the Code of Civil Procedure, 1976, and consequently, Order 8 Rules 6A to 6G came to be introduced by virtue of which now the counter-claims can be set up by the defendant. 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, the defendant is given liberty to file a counter-claim and get adjudication. Issues are suggested in both the original claim as well as the counter-claim and both are disposed of by a common judgement. It is an enabling provision which has given a right to the defendant that instead of filing an independent action, he can seek that relief in a suit filed by the plaintiff against him. It is clear that the scope of a counterclaim is in the nature of a cross suit for all purposes. Upshot of the above, emerging is the principle that the counter claim has to be treated as a separate suit. Only for the purpose of convenience and speedy disposal of rival claims, counter-claim in a suit is made permissible.

20. Under Order 8 Rule 6A(2) of the Civil Procedure Code 1908, it is provided that a counter-claim shall have the same effect as a cross suit so as to enable to the Court to pronounce judgment in the same suit, both on the original claim and the counter-claim. Order 8 Rule 6A(4) of the Civil Procedure Code 1908, clearly provides that the counter-claim shall be treated as a plaint and governed by the rules applicable to the plaints. According to the *proviso* to Order 8 Rule 6A(1) of the Civil Procedure Code 1908, the counter-claim should be within the pecuniary limits of jurisdiction of the Court.

21. Admittedly the counter-claim filed by the respondent/defendant in the suit on March 26, 2021 has been valued at Rs. 1,20,000/-. In view of the provisions of the statute as quoted above, the valuation of the counter-claim appears to be much less than the lower limit of the pecuniary jurisdiction of this Court as on the date of filing of the said Counter claim. Pecuniary Jurisdiction of the Court as prevalent on the date of filing of the counter-claim would be relevant for the purpose of determination of the maintainability of the same, so far as valuation therefor vis-à-vis pecuniary jurisdiction of the Court is concerned. Hence, admission of the counter-claim, in the instant case violates the provision under *proviso* to Order 8 Rule 6A(1) of the Civil Procedure Code 1908.

- 22.** So far as, the aspect of valuation of the counter-claim is concerned, the Hon'ble Single Judge has erred to take into consideration the same, while delivering the order impugned. The valuation of the counter-claim, which is a cross suit in nature, determines its maintainability, so far as the pecuniary jurisdiction of a Court is concerned. Evidently the respondent/defendant has not been able to cross that hurdle, so as to maintain his counter-claim before the Court. In such view of the facts, the decision of the Hon'ble Single Judge in the said order dated August 29, 2023, thereby dismissing the prayer of the appellant/plaintiff for setting aside of the counter-claim by the respondent/defendant, before the Court, appears to be erroneous and not maintainable. The same is liable to be set aside.
- 23.** The Court finds it unnecessary to deal with the other points argued in the appeal by the parties, since the impugned order is found not to be sustained at the threshold for the reason of lack of jurisdiction.
- 24.** Hence, the instant appeal being A.P.O.T. 333 of 2023, filed by the appellant/plaintiff, is allowed. The impugned order of the Hon'ble Single Judge dated August 29, 2023, in G.A. No. 4 of 2023, passed in connection with CS No. 184 of 1989, is set aside. The counter-claim filed by the respondent/defendant is not maintainable in this Court.

- 25.** Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(ARIJIT BANERJEE, J.)

(RAI CHATTOPADHYAY, J.)

Later

After delivery of the judgment, Mr. Kar, learned Senior Counsel representing the respondent/defendant no.6(X), says that this judgment and order should not prevent his client from agitating his counter-claim before the appropriate forum.

We clarify that this judgment and order will not prevent the defendant no. 6(X) from taking recourse to any other forum for enforcement of his counter-claim as he may be entitled to in accordance with law.

(ARIJIT BANERJEE, J.)

(RAI CHATTOPADHYAY, J.)