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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE ADMIRALTY JURISDICTION**

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 2785 OF 2025

IN

COMMERCIAL ADMIRALTY SUIT NO. 9 OF 2023

M.V. Thera (IMO No. 935117) and another ... Applicants

In the matter between :

Amba Shipping and Logistics Pvt. Ltd. ... Plaintiff

Versus

M.V. Thera (IMO No. 935117) and another ... Defendants

.....

Mr. Prathamesh Kamat alongwith Ms. Arpeeta Panvalkar and Mr. Chinmay Deshpande instructed by Renata Partners, Advocate for the Applicants/Original Defendants.

Ms. Isha Sawant instructed by Mr. Ashwin Shanker, Advocate for the Plaintiff.

.....

CORAM : ABHAY AHUJA, J.

DATE : 17 OCTOBER 2025

P.C. :

1. This Interim Application has been filed by the original Defendants in the Suit under Order VIII Rule 6-A of the Code of Civil Procedure, 1908 (the "CPC") seeking to amend the written statement to incorporate the counter-claim.

2. The case of the Applicants is that the claim for damages which is sought to be incorporated as a counter-claim in the written statement arising out of the breaches of the Shipman Agreement(s) dated 4th August 2020 and 1st June 2022 by the Plaintiff which has led to the Applicants incurring losses and damages on account of the Plaintiff's failure to provide efficient and timely services and that therefore the Plaintiff is liable to make good the losses incurred by the original Defendants being direct and foreseeable consequence of the breaches committed by the Plaintiff. That therefore the Applicants are entitled to Rs.2,92,14,065.50 and USD 1,010,837.38 alongwith interest at the rate of 18% per annum with further interest from the date of filing of the counter-claim till payment/realization.

3. Mr. Kamat, learned Counsel appearing for the said Applicants has submitted that the proposed amendments to the written statement will not in any manner alter or change the cause of action in the Suit as the Applicants' claim arises from the same transaction on which the Plaintiff has based the Suit. That the cause of action in the counter-claim has arisen before filing of the suit. That the issues have also not been framed and that the trial has not yet commenced.

4. Mr. Kamat submits that it is a settled law that the counter-claim can be filed after filing of the written statement with leave of the Court and upon such terms as the Court thinks fit.

5. Mr. Kamat submits that there has also been no delay in filing this Application.

6. Mr. Kamat submits that even otherwise there is a justification for the delay as the issues involved in the suit are factually and legally intricate, which required a thorough assessment of the facts, legal implications and supporting material including several relevant documents, agreements, correspondence, records, which were voluminous.

7. Mr. Kamat submits that the necessity of the counter-claim became evident only after further review of documents and developments post-filing of the written statement. That certain facts which are integral to the counter-claim came to the light during internal discussions, correspondence with relevant parties and upon obtaining clarifications which were not immediately available at the time of filing of the written statement. Mr. Kamat further submits that

during the course of proceedings certain crucial documents substantiating the counter-claim were inadvertently misplaced as the same were pertaining to the transactions dating back to the year 2022. That therefore the efforts to ensure the accurate and comprehensive presentation of facts and to retrieve the documents took time. Also that few key employees who were directly involved in the transactions in question had ceased their association with the 2nd Applicant and therefore retrieving such vital information alongwith corresponding supporting documentary evidence delayed the filing of this application. That after having obtained the information and extensive consultation with Advocates, the Applicants also took time as due caution was exercised in drafting, reviewing and finalizing the counter-claim before seeking leave of this Court.

8. Mr. Kamat further also refers to order dated 19th June 2024 whereby time was sought by the Applicants to file counter-claim by amendment of the written statement and submits that three weeks' time was granted to take appropriate steps for amendment of the written statement in order to include counter-claim and that this Application has been filed within the prescribed time limit.

9. Mr. Kamat submits that therefore this Court may allow the application subject to reasonable terms as in any event the Plaintiff would be given an opportunity to file its written statement to the counter-claim. Mr. Kamat submits that allowing the application would also avoid multiplicity of proceedings.

10. Mr. Kamat has relied upon the following decisions in support of his contentions :

- (a) ***Ramesh Chand Ardawatiya vs. Anil Panjwani***¹
- (b) ***Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others***²
- (c) ***Vijaymala Sidling Doijad vs. The State of Maharashtra***³.

11. On the other hand, Ms. Sawant, learned Counsel, appearing for the Plaintiff has opposed the Application.

12. Ms. Sawant submits that there is a nine months' delay in the Defendants' approaching this Court seeking leave to file their counter-claim. That there has been no explanation for the period of delay from the filing of the written statement and this application. Ms. Sawant

1 (2003) 7 SCC 350

2 (2020) 2 SCC 394

3 2025:BHC-AS:9766

submits that in fact on 26th April 2024, the suit had been listed for framing of issues and that the Plaintiff was ready with their proposed issues on that day and despite that the Defendants sought time to tender their draft issues. That on 3rd May 2024, when once again the suit was listed for framing of issues, the Applicants requested for time to file their counter-claim and again time was sought on 19th June 2024 and time was granted. Ms. Sawant submits that since no explanation for the delay has been furnished, allowing the Application, would be contrary to attaining the laudable goal of speedy justice.

13. Ms. Sawant submits that amendment to a written statement is not a matter of right but always a discretion of the Court and the discretion vested with this Court to ascertain maintainability of the counter-claim is limited by various considerations based on facts and circumstances of each case. Ms. Sawant relies upon paragraphs 19, 20 and 21 of the decision in the case of *Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others (supra)* and submits that since the parameters set out therein have not been met, the Application be dismissed. Ms. Sawant also relies upon the operative part of the order dated 28th February 2025, in the case of *Vijaymala Sidling Doijad vs. The State of Maharashtra (supra)*.

14. I have heard the learned Counsel and considered their submissions.

15. It is not in dispute that the suit was filed on 9th December 2022 with an interim prayer to arrest the Defendant No.1-vessel, which was in fact arrested on the same date. On 15th December 2022, the Defendants viz. the Applicants entered appearance and the vessel was released upon the Defendants furnishing security. Thereafter, on 9th June 2023, writ of summons was served upon the Defendants and 30 days' period from the date of service of writ of summons elapsed on 9th July 2023. The period of 120 days from service of writ of summons was to elapse on 7th October 2023. On 5th October 2023, the Defendants filed an Interim Application for condonation of delay of 118 days from the date of service of the writ of summons. On 1st February 2024 this Court passed an order condoning the delay and directed that the written statement be taken on record.

16. No doubt, the suit was listed for framing of issues on 26th April 2024 and although the draft issues on behalf of the Plaintiff were ready, however the Applicants sought time to furnish their draft issues;

on 3rd May 2024 the matter was listed for framing of issues, when the Defendants requested for time to file counter-claim and time was granted till 19th June 2024. On 19th June 2024 the Defendants sought further extension of time to file the counter-claim and the Interim Application for amendment of the written statement and this Court had granted three weeks' time from 19th June 2024. In pursuance of the said order, this Interim Application has been filed on 11th July 2024 and served on the Plaintiff on 12th July 2024.

17. The aforesaid facts are not in dispute. On behalf of the Applicants it has been submitted that there has been no delay, whereas on behalf of the Plaintiff/Respondent, it is being submitted that there has been delay of nine months from the date of filing of the written statement, whereas the counter-claim should have been filed alongwith the written statement. The Plaintiff has endeavoured to make a case that there is no explanation for this delay.

18. Both the learned Counsel have relied upon the decision of the Hon'ble Supreme Court in the case of *Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others (supra)* albeit interpreting the same to advance their respective submissions.

19. Order VIII Rule 6-A of the CPC provides that a defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, and the said counter-claim can be in the nature of a claim for damages. It is also provided that such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim. That 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.

20. It has been observed by the Hon'ble Supreme Court in the case of *Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others (supra)* that as per Rule 8 any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off or counter-claim may be raised by the

defendant or plaintiff, as the case may be, in his written statement. Rule 9 prohibits presentation of pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim except with the leave of the Court and upon such terms as the Court thinks fit; and the provision further stipulates that the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same. Accordingly, the following conditions have been observed to have become applicable for filing of counter-claim under Order VIII Rule 6-A of CPC :

(i) Counterclaim can be for claim of damages or otherwise.

(ii) Counterclaim should relate to the cause of action, which may accrue before or even after filing the suit.

(iii) If the cause of action in the counterclaim relates to one accrued after filing of suit, it should be one accruing before filing of the written statement or the time given for the same.

21. In the case of ***Mahendra Kumar vs. State of M.P.***⁴, the Hon'ble Supreme Court has while considering the scope of Rule 6-A of Order VIII of CPC, held that on the face of it, Rule 6-A(1) does not bar the filing of a counter-claim by the Defendant after he has filed the written

4 (1987) 3 SCC 265

statement and as the cause of action for the counter-claim therein had arisen before the filing of the written statement, the counter-claim was held to be maintainable. In the case of *Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others (supra)*, the Hon'ble Supreme Court while observing that whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice and particularly, the purpose of introducing Rule 6-A in Order 8 CPC is to avoid multiplicity of proceedings, held that the time limitation for filing of the counter-claim, is not explicitly provided by the legislature, rather only limitation as to the accrual of the cause of action is provided and that the embargo in Rule 6-A is the accrual of the cause of action alone, although observing that this does not mean that the counter-claim can be filed at any time after filing of the written statement as time-barred claims cannot be entertained under the guise of a counter-claim just because of the fact that the cause of action arose as per the parameters of Rule 6-A.

22. The Hon'ble Supreme Court has however also observed that there cannot be a rigid or hyper-technical approach, and it cannot be that just because the said provision stipulates that the counter-claim

has to be filed alongwith written statement, beyond that the Court has no power. It has been observed in paragraph 18 of the said decision that taking into consideration the reasons stated in support of the counter-claim, the Court should adopt a balanced approach keeping in mind the object to subserve the ends of justice. That there cannot be any hard and fast rule to say that in a particular time the counter-claim has to be filed, by curtailing the discretion conferred on the courts. The trial court has to exercise the discretion judiciously. That there cannot be a straitjacket formula. In paragraph 21, relied upon by the learned Counsel for the Plaintiff, the Hon'ble Supreme Court has summed up its findings as under :

21. We sum up our findings, that Order VIII Rule 6A of the CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the Defendant to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. The Court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The Court in such cases have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- (i.) Period of delay.*
- (ii.) Prescribed limitation period for the cause of action pleaded.*
- (iii.) Reason for the delay.*
- (iv.) Defendant's assertion of his right.*

- (v.) *Similarity of cause of action between the main Suit and the counter-claim.*
- (vi.) *Cost of fresh litigation.*
- (vii.) *Injustice and abuse of process.*
- (viii.) *Prejudice to the opposite party.*
- (ix.) *And facts and circumstances of each case.*
- (x.) *In any case, not after framing of the issues.*

23. In the case of *Ramesh Chand Ardawatiya vs. Anil Panjwani* (*supra*), the Hon'ble Supreme Court has observed in paragraph 28 that looking to the scheme of Order VIII, there are three modes of pleading or setting up a counter-claim in a civil suit. Firstly, the written statement filed under Rule 1 may itself contain a counter-claim which in the light of Rule 1 read with Rule 6-A would be a counter-claim against the claim of the Plaintiff preferred in exercise of legal right conferred by Rule 6-A. Secondly, a counter-claim may be preferred by way of amendment incorporated subject to the leave of the Court in a written statement already filed. Thirdly, a counter-claim may be filed by way of a subsequent pleading under Rule 9.

24. The Hon'ble Supreme Court has clearly observed that in the latter two cases, the counter-claim though referable to Rule 6-A cannot be brought on record as of right but shall be governed by the discretion vesting in the court, either under Order VI Rule 17 of the CPC if sought

to be introduced by way of amendment, or, subject to exercise of discretion conferred on the court under Order VIII Rule 9 of the CPC if sought to be placed on record by way of subsequent pleading. The Hon'ble Supreme Court has observed that the purpose of the provision enabling filing of a counter-claim is to avoid multiplicity of judicial proceedings and save upon the Court's time as also to exclude the inconvenience to the parties by enabling claims and counter-claims. The idea is that the dispute between the same parties should be decided in the same proceedings. That a counter-claim not contained in the original written statement may be refused to be taken on record if the issues have already been framed and the case is set down for trial, and more so when the trial has already commenced.

25. It is settled law as observed in the case of *Shanti Rani Das Dewanjee vs. Dinesh Chandra Day*⁵ that right to file counter-claim is referable to the date of accrual of the cause of action.

26. Having elucidated the principles as enunciated by the Hon'ble Supreme Court as above, let us consider the facts of this case in the light of the said principles.

⁵ (1997) 8 SCC 174

27. It is not in dispute that the cause of action on the basis of which the counter-claim is proposed to be set up has arisen prior to the filing of the suit. In fact the pleadings clearly indicate that the Applicants' claim arises from the same transaction of which the Plaintiff has based the present suit, which has not been controverted with any supporting evidence. No doubt, the counter-claim ought to have been set up in the written statement itself, however, as noted above, there is no bar to setting up the counter-claim after filing of the written statement.

28. The delay alleged is nine months from the date of filing of the written statement although in the reply it is stated to be seven months. The explanation that has been offered *albeit* in rejoinder to the application is that certain facts which were integral to the counter-claim came to the light during internal discussions, correspondence with relevant parties and upon obtaining clarifications which were not immediately available at the time of filing of the written statement. That during the course of proceedings certain crucial documents substantiating the counter-claim were inadvertently misplaced as the same were pertaining to the transactions dating back to the year 2022

and therefore the efforts to ensure the accurate and comprehensive presentation of facts and to retrieve the documents took time. That few key employees who were directly involved in the transactions in question had ceased their association with the 2nd Applicant and therefore retrieving such vital information alongwith corresponding supporting documentary evidence took time. That after having obtained the information and extensive consultation with Advocates, the Applicants also took time as due caution in drafting, reviewing and finalizing the counter-claim before seeking leave of this Court. It therefore cannot be said that there is no explanation to the delay nor is the delay inordinate. The issues also have not been settled. The trial has not yet commenced.

29. The counter-claim which is a claim for damages purportedly arises out of the breaches of the Shipman Agreement(s) dated 4th August 2020 and 1st June 2022 by the Plaintiff which has led to the Applicants incurring losses and damages on account of the Plaintiff's failure to provide efficient and timely services leading to losses incurred by the original Defendants submitted to be direct and foreseeable consequence of the breaches committed by the Plaintiff.

30. The Hon'ble Supreme Court in paragraph 20 of the decision in the case of *Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others (supra)* has observed that attaining the laudable goal of speedy justice itself cannot be the only end, rather effective justice wherein adequate opportunity is provided to all the parties, needs to be recognized as well. This is not a case where there has been substantive delay to be so inordinate which will cause injustice to the Plaintiff and I do not intend to deprive an adequate opportunity to the Applicants. The Plaintiff will certainly be entitled to file the written statement to the counter-claim.

31. It is also to be noted that on 3rd May 2024, this Court had granted time to the Defendants till 19th June 2024 to file application for counter-claim however, on 19th June 2024, this Court, on a request made on behalf of the Defendants extended the time period by three more weeks and there is no dispute that this Application has been filed within that time.

32. Although this Court in *Vijaymala Sidling Doijad vs. The State of Maharashtra (supra)* had rejected the Application seeking permission to file counter-claim, the said decision is distinguishable on material

facts as in that case, the amendment was sought post settlement of issues and recording of evidence of two witnesses. The said decision may not be of any assistance to the Plaintiff, although paragraphs 21 and 23 of the said decision support the case of the Applicants.

33. Admittedly, although the suit had been listed for framing of issues twice, as noted above the issues have not been framed even though the Plaintiff did provide draft issues. I am satisfied that there has been no abuse of process of law. Considering that the counter-claim is arising out of the same cause of action, allowing this application would also avoid multiplicity of proceedings. However, there would indeed be some prejudice caused to the Plaintiff in terms of time which I propose to balance out by imposing costs. I am therefore inclined to allow the Application, subject to payment of costs of Rs.1 lakhs to the Plaintiff.

34. Accordingly, the Application is allowed in terms of prayer clauses (a) and (b), subject to payment of costs of Rs.1,00,000/- to the Plaintiff, within a period of four weeks from the date of uploading of this order.

35. Subject to payment of costs as above, let the amendments be carried out within a period of two weeks and let the amended pleadings be served upon the Plaintiff in two weeks thereafter.

36. The Plaintiff to file written statement to the counter-claim within a period of thirty days upon receipt of the amended written statement including the counter-claim.

37. Interim Application accordingly stands allowed and disposed as above.

(ABHAY AHUJA, J.)