



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP. Nos.2767 & 2733 of 2025
and CMP. Nos.15666 & 15443 of 2025

M/s.Bhagwati Electric House,
Bhagwati Devi Vaishnav,
“Anchana Market”
Salawas Main Road, Sangariya Phanta,
Jodhpur -342 013,
Rajasthan State.

... Petitioner in both CRPs

Vs.

M/s.Ola Lighting Company,
20/6, Vathiyar Kandan Street,
Choolai, Chennai – 600 012.

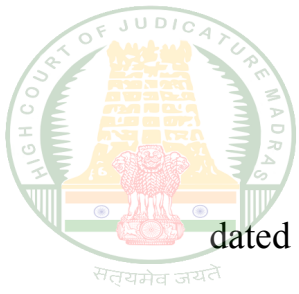
... Respondent in both CRPs

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order dated 10.03.2025 in I.A. No.2 of 2025 and I.A. No.3 of 2025 in COS. No.96 of 2024 on the file of the Principal Commercial Court, Egmore, Chennai.

For Petitioner : Mr.K.Shakespeare in both CRPs

For Respondent : Mr.R.Rahul Kotadia in both CRPs

COMMON ORDER



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The Civil Revision Petitions have been filed to set aside the orders dated 10.03.2025 in I.A. No.2 of 2025 and I.A. No.3 of 2025 in COS. No.96 of 2024 on the file of the Principal Commercial Court, Egmore, Chennai.

2. Heard Mr..K.Shakespeare, learned counsel for the petitioner and Mr.Rahul Kotadia, learned counsel for the respondent in both revision.

3. The petitioner is the defendant in COS. No.96 of 2024 on the file of the Principal Commercial Court, Egmore, Chennai, the said suit was set exparte and subsequently, on his Application, the said exparte order in the suit was set aside. According to the learned counsel for the petitioner, the written statement was filed on 06.11.2024 within the 120 days permissible time to file written statement in the Commercial Suit. However, the said written statement was not accepted on the ground that there was a delay of 6 days and therefore, the defendant has lost his rights to defend the suit by filing written statement. The petitioner has chosen to file a review Application contending that the written statement was filed in time and viz., on 06.11.2024 and not on 18.11.2024 as found by the Trial Court. The learned counsel for the petitioner would state that the written statement was also e.filed and relevant dates have not been taken into account by the

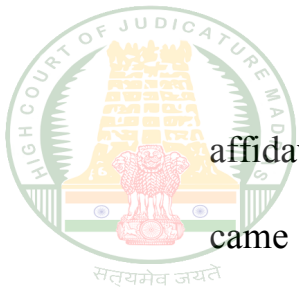


learned Trial Judge while adjudicating the point as to whether the written statement was infact filed on 06.11.2024 or not.

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4. Be that as it may, the learned counsel for the petitioner would also invite my attention to the findings of the Commercial Court since the counter claim was filed in the form of written statement, even the written statement cannot be accepted. I am unable to countenance the said finding by the learned Commercial Judge. Independent of a right to file written statement, the defendant can always make a counter claim in a suit, including a Commercial Suit. Therefore, the counter claim could not have been rejected. The Trial Court ought to have permitted the petitioner to make up deficit Court fee for which separate Application was filed which was also dismissed, in respect of which one of the above two revision has been herein above preferred.

5. The learned counsel for the respondent Mr.Rahul Kottadia, would submit that the written statement copy was never served on the plaintiff on 06.11.2024 as claimed by the learned counsel for the petitioner and it was served only on 18.11.2024. He would also point out to the fact that the written statement was filed only in September, 2024. However, in the



affidavit in support of the present Application in which the impugned order came to be passed, it is falsely contended the written statement filed along with set aside application. He would therefore state that there is no possibility for the written statement and have been filed in August 2024 when the set aside Application was filed. The learned counsel would therefore state that there is no error or infirmity in the order of the Trial Court refusing to entertain the written statement.

6. I have carefully considered the submission advanced by the learned counsel on either side.

7. As regards the counter claim as discussed herein, the Trial Court has clearly fell in error in holding that even the counter claim was not maintainable for the simple reason that it was filed along with written statement. Even when the written statement contained the counter claim, the counter claim has to be treated as an independent claim made by the defendant, as against the plaintiff who is the defendant in the counter claim. Therefore, the rejection of the counter claim is liable to be set aside. The petitioner shall make up deficit Court fee within a period of two (2) weeks from the receipt of the counter claim shall be accepted.



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8. Insofar as the written statement, considering the various dates that have been brought to my notice and also the claim that the relevant particulars have been agitated in the Review, but unfortunately, the Commercial Court has dismissed the review on technical grounds, I am inclined to set aside the order and remit the matter to the Commercial Court to decide the Review Application, on merits, after hearing both the learned counsel for the petitioner and the respondent and pass orders on merit after ascertaining the records, correct dates on which the written statement was filed, e.file as claimed by the revision petitioner. On enquiry, the commercial Court shall pass order in that Review Application within a period of four(4) weeks.

9. In fine, CRP. No.2767 of 2025 is allowed and CRP. No.2733 of 2025 is disposed of. Connected Miscellaneous Petitions are also closed. No costs.

08.08.2025

Speaking/Non-speaking : Yes/No
Index : Yes / No
rkp

P.B.BALAJI.J.,

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To
The Principal Commercial Judge, Egmore, Chennai.

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