

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

**BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI**

C.O. 133 of 2026

**Sri Sanjay Seth
-Vs-
Sri Tapan Kumar Sarkar**

For the Petitioner : Mr. D.K. Adhikari, Adv.
Mr. Samir Kumar Adhikari, Adv.

Hearing Concluded on : 06.03.2026

Judgment on : 06.03.2026

Om Narayan Rai, J.:-

1. This revisional application is directed against an order dated August 27, 2025 passed by the learned District Judge, Howrah in Misc. Case No. 190 of 2025, thereby rejecting the petitioner's application under Section 24 of the Code of Civil Procedure, 1908 (hereafter "the Code").
2. The short facts of the case are that the opposite party herein has filed a suit, being Title Suit No. 525 of 2018, in the 6th Court of the learned Civil Judge (Junior Division), Howrah praying for eviction of the petitioner, while asserting that the petitioner was a licensee in the suit property and his license had been revoked. In the said suit, the petitioner filed his written statement along with a counter-claim.

3. By an order dated December 14, 2018, the learned Trial Court refused to accept the counter-claim holding that the same was beyond the pecuniary jurisdiction of the Court.
4. The petitioner thereafter filed an application under Section 151 of the Code seeking modification of the order dated November 14, 2018 and a direction upon the parties to file the suit as well as the counter-claim upon returning the same to a proper Court having jurisdiction over both.
5. The said application was rejected by an order dated June 05, 2024.
6. The petitioner, thereafter filed an application under Section 24 of the Code before the learned District Judge which was registered as Misc. Case No. 190 of 2024. The said misc. case has been dismissed by the order impugned. Hence the present revisional application.
7. Mr. Adhikari, learned Advocate appearing for the petitioner submits that the learned District Judge has erred in law in rejecting the petitioner's application under Section 24 of the Code and by not transferring the suit filed by the opposite party as well as the petitioner's counter-claim from the Court of the learned Civil Judge (Junior Division), 6th Court at Howrah to a competent Court having jurisdiction over both, the suit as well as the counter-claim.
8. In support of his submission, he relies on a judgment of a co-ordinate Bench of this court in the case of ***Sharmistha Biswas vs. Nanigopal Deb & Another¹***.

¹ 2014 SCC OnLine Cal 2691

- 9.** Having heard Mr. Adhikari, learned Advocate appearing for the petitioner and having perused the material-on-record, this Court does not find any reason to interfere with the order impugned.
- 10.** Section 24 of the Code provides for transfer of any proceeding pending before a Court to another Court upon the District Court or the High Court being satisfied that the facts of the case warrant such transfer.
- 11.** Section 24(5) of the Code, explicitly provides that a suit or proceeding may be transferred from a Court which has no jurisdiction to try it to a Court having jurisdiction. However, a plain reading of the provision would indicate that for the District Court or the High Court to exercise such power under Section 24, a proceeding must be pending before the Court wherefrom the same is required to be transferred.
- 12.** In the case at hand, the learned Trial Court has as far back as on December 14, 2018 refused to accept the counter-claim of the petitioner stating that the same was beyond the pecuniary jurisdiction of the Court. It is not in dispute that the learned Trial Court does not have pecuniary jurisdiction in respect of the counter-claim. If that be the case, the learned Trial Court was justified in not accepting the counter-claim in terms of the proviso to Order 8 Rule 6A of the Code.
- 13.** Furthermore, Order 8 Rule 6A(2) of the Code provides that a counter claim shall have the same effect as a cross-suit. In such view of the matter an order refusing to accept a counter claim on the ground that the Court lacks pecuniary jurisdiction is an order in the nature of return of plaint.
- 14.** Such being the position, upon refusal of the learned Trial Court to accept the counter-claim (i.e. upon return of plaint) there was no proceeding in the

nature of a counter-claim pending before the learned Trial Court which could have been transferred by the learned District Judge in exercise of the power under Section 24 of the Code.

- 15.** The judgment of the co-ordinate Bench of this Court in ***Sharmistha Biswas*** (supra) was rendered in the peculiar facts of the case. Paragraphs 4 and 14 of the said judgment are quoted hereinbelow:-

“4. Subsequently on 08.07.2010 the petitioner prayed for return of the Plaint and Counter-claim to the parties on the grounds stated therein. But the Ld. Trial Court vide the impugned Order passed on 18.09.2010 rejected the application by holding that while the original Plaint valued at Rs. 15,000/- was within its pecuniary jurisdiction, and consequently entertainable by the Court, yet the Counter-claim exceeded its jurisdiction, being valued at Rs. 1,74,000/-, and therefore could not be accepted. The petitioner is aggrieved with the above decision of the Court, particularly in view of the fact that she had deposited the Deficit Court Fees in compliance of the Court's own direction, and so the subsequent non-acceptance of her Counter-claim was illegal and improper.

14. In such circumstances it is held that even though the impugned Order dated 08.09.2010 passed by the Ld. Trial Court is technically correct, but still the ends of justice will not be served by refusing acceptance of the petitioner's Counter-claim when the Court itself had directed her to pay the Deficit Court fees, and thereby implied a jurisdiction which it actually did not possess.....”

- 16.** Thus in the said case, the Court had impliedly assumed jurisdiction, which it did not have, by directing the defendant before it to put in the deficit Court fees in respect of the counter-claim.

17. In the case at hand, the Court has at the very threshold indicated that it does not have jurisdiction and the Court fees have been paid by the petitioner of his own accord. In any case, a Court cannot assume jurisdiction and entertain a suit or a counter-claim merely because of a suit or a counter-claim being filed with Court fees, in case it does not have one.
18. For all the reasons aforesaid, this Court is not inclined to interfere with the order impugned. C.O. 133 of 2026 is dismissed. No costs.
19. Mr. Adhikari, learned Advocate appearing for the petitioner submits that his client should be permitted to seek refund of the Court fees paid in respect of the counter-claim.
20. The petitioner shall be free to make appropriate application before the learned Trial Court seeking refund of the Court fees which application, if filed, shall be dealt with by the learned Trial Court in accordance with law.
21. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)

(AJ)