

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

C.O. 3320 of 2022

Batliboi Environmental Engineering Limited
Vs
Eastern Metec Private Limited

For the Petitioner : Mr. U.S. Menon,
Mr. Abhirup Chakraborty,
Mr. Tuhin Ganguly.

For the Respondent : Ms. Debjani Sengupta, (V/C)
Mr. Subhankar Nag,
Mr. Soumya Ray,
Ms. Anwesha Saha,
Ms. Vaswati Banerjee,
Mr. Pramit Panda.

Judgment reserved on : 28.01.2026

Judgment delivered on : 19.02.2026

Shampa Dutt (Paul), J.:

1. The civil revision has been preferred challenging order no. 7 dated 11th July, 2022 passed by the learned Judge, Commercial Court at Alipore in Money Suit No. 13 of 2022.
2. Vide the impugned order, the learned Commercial Court noted that the mediation between the parties had failed. The learned Court further directed the defendant to file his written statement along with counter

claim upon the plaintiff within 48 hrs. and also granted leave to the defendant to file all original documents.

3. Being aggrieved, the plaintiff/petitioner has preferred the revisional application stating that the defendant/opposite party appeared on 19.01.2016 and filed its written statement (without any counter claim) on 20.11.2017.
4. On 22.12.2021 the suit was fixed for adducing evidence of P.W. No. 1. On that date due to paucity of time the evidence of the P.W. 1 could not take place, but the copy of the evidence on affidavit was served upon the learned advocate for the defendant.
5. On 09.02.2022, the suit was transferred to the Commercial Court and was renumbered as Money Suit No. 13 of 2022. On 11.07.2022 the defendant filed a fresh written statement with a purported counter claim with inconsistent pleas. The said written statement with counter claim was accepted on record by the learned Commercial Court despite objections from the petitioner.
6. The petitioner submits that the impugned order is not in accordance with law and is thus liable to be set aside on the following grounds:-

“(i) In terms of Section 15(3) of the Commercial Courts Act, 2015 all pending suits which are transferred shall apply to those procedures that were not complete at the time of transfer. There is no provision under the Commercial Courts Act, 2015 that the transferred suit shall proceed De Novo.

(ii) Since the defendant has already filed its written statement, it cannot change its defence by filing a new written statement

with counter claim and new plea. Hence, the order accepting the written statement with counter claim is not in consonance with the provisions of Order VIII Rule 6A of the Code of Civil Procedure, 1908.

(iii) The defendant has completely changed its stand in the new written statement by introducing new cause of action which is not permissible under law. The impugned order has caused a great prejudice to the petitioner resulting in miscarriage of justice.”

7. It is further stated by the petitioner that the contention of the defendant/opposite party that the transfer of suit to Commercial Court was under Order VII Rule 10 CPC in the nature of return of plaint and that the proceeding was to start de novo, is misconceived and untenable in law. The petition for transfer was made in view of Commercial Courts Act, 2015, having come into force.
8. It is also stated by the petitioner that the contention of the opposite party that the civil revisional application is not maintainable in terms of Section 8 of the Commercial Courts Act shall not be applicable to the petitions under Article 227 of the Constitution of India. Reliance is placed on **State of Gujarat vs. Union of India reported in 2018 SCC OnLine Guj 1515.**
9. The petitioner has relied upon the judgment in **State of Gujarat (supra) paragraph 32, 33 and 41**, the Court held:-

“41. In view of the above and for reasons stated above and considering the decisions of Hon'ble

Supreme Court referred to hereinabove, our conclusions in nutshell are as under:—

(1) The bar contained under Section 8 of the Commercial Courts Act against entertainability of “civil revision application or petition” against the interlocutory orders passed by the subordinate/Commercial Courts, shall not be applicable to the writ petitions under Article 227 of the Constitution of India.

(2) The bar contained in Section 8 of the Commercial Courts Act shall not affect the supervisory jurisdiction of the High Courts under Article 227 of the Constitution of India in respect of the orders, including interlocutory orders, passed by the Commercial Court and writ petitions under Article 227 of the Constitution of India may be entertainable, however, subject to the following observations and restrictions:—

(a) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(b) The supervisory jurisdiction under Article 227 of the Constitution of India may not be exercised to correct mere errors of fact or of law and may be exercised only when the following requirements are satisfied:—

(i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and

(ii) a grave injustice or gross failure of justice has occasioned thereby

(c) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(d) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(3) Though while exercising supervisory jurisdiction under Article 227 of the Constitution of India, the High Court may annul or set aside the act, order or proceedings of the subordinate courts, it may not substitute its own decision in place thereof.

(4) In exercise of supervisory jurisdiction, the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases, itself make an order in supersession or substitution of the order of the subordinate Court as the Court should have made in the facts and circumstances of the case.

(5) That while exercising powers under Article 227 of the Constitution of India, the High Court would have to consider the observations made by the Hon'ble Supreme Court in Paragraph-39 in the case of Surya Dev Rai v. Ram Chander Rai (supra), which are as under:

“39. Though we have tried to lay down broad principles and working rules the fact remains that the parameters for exercise of jurisdiction under Article-226 or 227 of the Constitution cannot be tied down in a straitjacket

formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge".

- 10.** The defendant/opposite party herein by filing his written notes has stated that admittedly on 28.05.2018 a written statement was filed by the defendant/opposite party before the civil Court and on the prayer of the said defendant/opposite party the suit was transferred to the Commercial Court on 09.02.2022.
- 11.** On 03.03.2022, the suit was heard as Money Suit No. 13 of 2022 on receiving the records from the civil Court by the Commercial Court.
- 12.** It is the contention of the defendant/opposite party that on 10.03.2022, the defendant/opposite party prayed for sending the matter for mediation, on filing of the written statement and the prayer was allowed.
- 13.** It is stated that no appeal was preferred from such an order by the plaintiff/petitioner and, as such, on the date of the impugned order the

petitioner's written statement along with counter claim was accepted by the Commercial Court.

14. It is further submitted that a fresh written statement along with counter claim was required to be filed as **after filing of the earlier written statement, arbitration proceeding had been initiated against the opposite party by Lursen & Toubro and Usha Martin and, as such, due to the subsequent cause of action, the counter claim was filed by the petitioner.**
15. It is the specific contention of the defendant/opposite party herein that when such a suit is transferred, the same is under the provisions of Order 7 Rule 10 CPC, even if the same has been filed under Section 15 of the Commercial Court and such suit for transfer has to be adjudicated de novo.
16. The defendant has relied upon the following judgments in support of his contention:-
 - (i) ***M/s EXL Careers & Anr. vs. Frankfinn Aviation Services Pvt. Ltd. (2020) 12 SCC 667 paragraphs 11, 15 and 26.***
 - (ii) ***Namita Gupta vs. Suraj Holdings Ltd. (2024) SCC OnLine Delhi 142 789 paragraphs 32, 37, 43, 44, 50, 55, 58, 59 and 69.***
17. It is further stated that even after filing written statement there is no bar to filing a counter claim, specially if a subsequent cause of action arises after filing written statement.
18. On hearing the learned counsels for the parties and on perusal of the materials on record, it appears that admittedly the suit in the present

case was pending before the civil Court wherein admittedly written statement had already been filed by the defendant/opposite party herein.

19. Before the civil Court, the defendant/opposite party herein filed his written statement as per Order VIII Rule 1 CPC. No counter claim was filed by the defendant/opposite party at the time of filing the written statement before the civil Court.
20. It is the contention of the said defendant/opposite party that subsequently before the Commercial Court, **a fresh cause of action arose and, as such, the defendant was constrained to file a fresh written statement along with a counter claim. Hence the prayer for dismissal of the revision.**
21. The provision in respect of a counter claim to be filed by a defendant in a suit, is provided under Order VIII Rule 6A of the CPC and this counter claim is in addition to his written statement. The plaintiff in such a case is at liberty to file written statement against the counter claim as per Order VIII Rule 6A (3) CPC.
22. The plaintiff/petitioner herein is aggrieved by the acceptance of the fresh written statement with counter claim and has prayed for setting aside of the impugned order, which is to be considered by this Court as per Order VIII Rule 6A (3) CPC along with the relevant provisions of the Commercial Court's Act.
23. **Order VIII Rule 6(C) CPC provides as follows:-**

“6C. Exclusion of counter-claim.-Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-

claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.”

- 24.** To counter the said submission by the plaintiff/petitioner herein, the defendant/opposite party relies upon the provisions of **Order VIII Rule 8 CPC which provides as follows:-**

*“8. **New ground of defence.**—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.”*

- 25. Order VIII Rule 9 CPC lays down:-**

*“9. **Subsequent pleadings.**—No pleading subsequent to the written statement of a defendant **other than by way of defence to set-off or counter-claim** shall be presented except by the **leave of the Court** and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties cut and fix a time of not more than thirty days for presenting the same.”*

- 26.** It appears that the provision under Order VIII Rule 9 CPC is very clear that there cannot be any further pleadings, subsequent to a written statement filed by the defendant, **other than by way of defence**, as a counter claim and the same can be accepted with the leave of the Court. The Court is also at liberty to call for a written statement or additional written statement from any of the parties within a time frame.
- 27.** In the present case, it appears that, leave to file a counter claim by the Commercial Court has been granted under Order VIII Rule 9 CPC.

28. Thus the impugned order in the present case being in accordance with law requires no interference.
29. Trial Court to proceed expeditiously on permitting the plaintiff/petitioner herein to file his written statement within the time permitted to the counter claim filed by the defendant/opposite party herein.
30. **CO 3320 of 2022 is dismissed.**
31. Connected application, if any, stands disposed of.
32. Interim order, if any, stands vacated.
33. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)