

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE DIVISION
COMMERCIAL DIVISION
ORIGINAL SIDE**

**AD-COM/3/2025
WITH
CS-COM/788/2024
IA NO: GA-COM/1/2026**

**MIHIJAM VANASPATI LIMITED AND ANR
VS
SHINING VYAPAR PRIVATE LIMITED AND ORS**

WITH

OCOT/2/2026

**MIHIJAM VANASPATI LTD AND ANR
VS
SHINING VYAPAR PRIVATE LIMITED AND OTHERS**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellants : Mr. Satadeep Bhattacharyya, Adv.
Mr. Bipin Ghosh, Adv.
Ms. Sriparna Mitra, Adv.

For the Respondent
No. 1 and 2 : Mr. Rishad Medora, Adv.
Mr. Rohit Banerjee, Adv.
Ms. Kanchan Jaju, Adv.
Ms. Sreha Das, Adv.

For the Respondent
No. 3 : Mr. K. C. Garg, Adv.
Ms. Sunita Agarwal, Adv.

HEARD ON : 31.03.2026
DELIVERED ON : 31.03.2026

DEBANGSU BASAK, J.:-

1. GA-COM/1/2026 is an application for condonation of delay in filing the cross-objection. For the ends of justice, the causes are accepted as sufficient and delay in filing the cross-objection is condoned. GA-COM/1/2026 is allowed.
2. The appeal and the cross-objection are taken up for hearing analogously as they emanate out of the same impugned judgment and decree dated July 7, 2025 passed in CS-COM/788/2024(Old No.CS/332/2012).
3. Learned advocate appearing for the appellant submits that, the appellant filed a suit for declaration and injunction. The declaration that the appellant sought for in the suit was that, appellant was not liable to repay the defendants in the suit.
4. Learned advocate appearing for the appellant submits that, defendant no.1 in the suit, filed a petition for winding up, being CP No.306 of 2012. Such winding up petition was admitted by an order dated January 22, 2013. Appeal carried therefrom, was disposed of by an order dated April 19, 2013. He submits that, before the Appeal Court, the appellant deposited a sum of Rs.13 lakhs as security.
5. Learned advocate appearing for the appellant submits that, a Special Leave Petition was carried against the order of the Appeal

Court dated April 19, 2013. Such Special Leave Petition was disposed of by an order dated September 13, 2013.

6. Referring to the order of the Supreme Court dated September 13, 2013, learned advocate appearing for the appellant submits that, a compromise was entered into between the appellant and the defendant no.1 in the suit. In fact, plight of the other defendants in the suit were also taken into consideration before the Hon'ble Supreme Court.
7. Referring to the contents of the order dated September 13, 2013, learned Advocate appearing for the appellant submits that, out of the sum of Rs.13 lakhs which was lying in deposit as security in the winding up petition, a sum of Rs.10 lakhs was directed to be adjusted towards the claim of the defendant no.1 as against appellant. The balance sum of Rs.3 lakhs was directed to be refunded to the appellant.
8. Learned advocate appearing for the appellant contends that the order dated September 13, 2013 is a complete compromise of all disputes between the appellant and the other parties to the suit. He contends that, subsequent to the order dated September 13, 2013, although the written statement of the defendant no.1 was already on record the defendant no.1 proceeded to amend such written statement by incorporating counterclaim. He refers to the pleadings of the counterclaim. He submits that the defendant no.1 sought to raise counterclaim on the strength of the order dated September 13, 2013 passed by the Supreme Court.

- 9.** Learned advocate appearing for the appellant submits that, the claim of the rival parties to the suit stood adjudicated upon by the order dated September 13, 2013. In any event, by reason of the principles enunciated in Order 23 Rule 1(4) of the Code of Civil Procedure, 1908, the defendant no.1 is deemed to have given up its right of counterclaim as on September 13, 2013, assuming that the defendant no.1 was entitled to any counterclaim at that point of time. No new event occurred subsequent to September 13, 2013 for the defendant no.1 to make a counterclaim as against the appellant in the pending suit.
- 10.** Learned advocate appearing for the appellant submits that, the learned Trial Judge, therefore, erred in allowing a portion of the counterclaim. He contends that, the suit was required to be dismissed as against all the defendants without the counterclaim being allowed.
- 11.** Learned advocate appearing for the defendant no.1 submits that, the order of the Hon'ble Supreme Court dated September 13, 2013 is required to be construed in the correct perspective. He refers to such order and submits that, such order cannot be construed to mean that a full and final settlement was arrived at between the parties to the suit. He submits that, the order uses words such as "settlement for the time being" and leaves the parties to the suit to their remedies in the suit. That would mean that the counterclaim of the respondent no.1 was kept open.

12. Learned advocate appearing for the respondent no.1 submits that, the counterclaim was introduced by way of amendment to the written statement which was granted by the learned Trial Judge. No grievance was raised as against the counterclaim being made.
13. Learned advocate appearing for the respondent no.1 refers to Order XXI Rule 1(4) of the Code of Civil Procedure, 1908 and submits that, the respondent no.1 did not abandon any part or portion of its claim. He submits that the entire transaction was for a sum of Rs.15 lakhs. Out of the sum of Rs.15 lakhs, Rs.2 lakhs was received by the respondent no.1 leaving a sum of Rs.13 lakhs to be receivable. He submits that, the rate of interest was admitted and acknowledged by the appellant. He refers to various pleadings of the appellant in this regard.
14. Learned advocate appearing for the respondent no.1 relies upon **(1999) 3 SCC 80 (INDUSTRIAL CREDIT & DEVELOPMENT SYNDICATE NOW CALLED I.C.D.S LTD. VS. SMITHABEN H. PATEL (SMT) AND OTHERS)** and **(2014) 5 SCC 577 (V. KALA BHARATHI AND OTHERS VS. ORIENTAL INSURANCE COMPANY LIMITED, BRANCH CHITTOOR)** and contends that, respondent no.1 is entitled to adjust the sum received from the appellant, towards the interest amount accrued and thereafter, towards the principal.
15. Relying upon **(1992) 3 SCC 576 (JIVENDRA NATH KAUL VS. COLLECTOR/DISTRICT MAGISTRATE AND ANOTHER)**, learned advocate appearing for the respondent no.1 submits that, the

words “for the time being” means that the same is for the time at which, the order dated September 13, 2013 was passed and not for the period subsequent thereto.

- 16.** Learned Advocate appearing for the defendant no. 3 submits that, the defendant no. 3 was involved in the suit unnecessarily. Defendant no. 3 incurred costs and expenses in defending the suit. He submits that, the cost of litigation awarded by the learned Trial Judge should be increased.
- 17.** Admittedly, a money transaction took place between the appellant and the respondent no. 1. Respondent no. 1 lent and advanced a sum of Rs.15 lakhs to the appellant which was repayable by the appellant along with agreed rate of interest.
- 18.** With the appellant not repaying such loan, respondent no. 1 filed a winding-up petition as against the appellant being CP No. 306 of 2012. Such winding-up petition was admitted by an order dated January 22, 2013 on the basis of the admission of the appellant that, the respondent no. 1 granted a loan of Rs.15 lakhs and that, the appellant agreed to pay interest at the rate of 12% per annum on such sum. The admission of the parties that, Rs.2 lakhs was repaid by the appellant was also placed on record.
- 19.** It is admitted at the Bar that, out of the sum of Rs.15 lakhs, lent and advanced by the respondent no. 1 to the appellant, a sum of Rs.2 lakhs was repaid by the appellant to the respondent no. 1 leaving a sum of Rs.13 lakhs due and payable along with accrued interest.

- 20.** An appeal was carried against the order dated January 22, 2013 passed in CP No. 306 of 2012 being APO/120/2013. Such appeal was dismissed by an order dated April 19, 2013. In the appeal, a sum of Rs.13 lakhs was deposited by the appellant.
- 21.** A special leave petition was preferred against the order dated April 19, 2013 passed in APO/120/2013. Such special leave petition was disposed of by an order dated September 13, 2013. It would be apposite to set out the relevant portions of the order dated September 13, 2013 which are as follows;

“3. We are happy to note that in the course of hearing of this appeal, the parties to the litigation have amicably resolved their dispute for the time being and therefore, the appeal is being disposed of with certain directions.

7. It has been agreed among the parties and therefore, we direct that out of the said amount of Rs.13 lacs deposited with the Calcutta High Court, the respondent is permitted to withdraw Rs.10 lacs and the remaining amount of Rs.3 lacs shall be returned to the appellant. The winding up proceedings shall be dropped or permitted to be withdrawn and the hearing of Civil Suit No. 332 of 2012 filed by the appellant along with its sister concern against the respondent and others, before the Calcutta High Court shall be expedited.

8. The learned counsel appearing for both the parties have assured this Court that the litigants and the counsel appearing in the aforestated civil suit shall extend their cooperation to the

High Court so that the aforestated suit can be disposed of at an early date.

9. In view of the above order, the order dated 19th April, 2013 passed in APO No. 120 of 2013 in CP No. 306 of 2012 and order passed in winding up Petition No. 306 of 2012 dated 22nd January, 2013 are quashed and set aside. The appeal is disposed of accordingly without any order as to costs.”

- 22.** During the pendency of the winding-up proceedings, the appellant as a plaintiff, filed a suit for declaration and injunction. In such suit, the defendant no. 1 filed a written statement. In such written statement, defendant no. 1 did not make any counterclaim till prior to September 13, 2013.
- 23.** Subsequent to the order dated September 13, 2013 of the Hon’ble Supreme Court, respondent no. 1 filed a written statement making further claims as against the appellant.
- 24.** Pursuant to and in terms of the order dated September 13, 2013, respondent no. 1 received a sum of Rs.10 lakhs out of the sum of Rs.13 lakhs kept in deposit to the credit of the winding-up petition. Court is informed that the appellant is yet to withdraw the sum of Rs.3 lakhs.
- 25.** At the time, when, the parties before the Hon’ble Supreme Court were entering into the agreement as was recorded in the order dated September 13, 2013, the parties were well aware as to their respective liabilities and obligations *vis-a-vis* each other. Respondent no. 1 agreed to receive a sum of Rs.10 lakhs.

Respondent no. 1 agreed that out of the sum of Rs.13 lakhs kept in deposit the balance Rs.3 lakhs will be returned to the appellant.

26. In our view, before the Hon'ble Supreme Court, parties entered into and settled their disputes against each other finally. Hon'ble Supreme Court was made aware of the pending suit and since, the special leave petition emanated out of the winding-up proceedings, Hon'ble Supreme Court permitted the parties to expedite the hearing of the suit. Hon'ble Supreme Court also directed the parties to extend their cooperation so that the suit can be disposed of at an early date.
27. It is the contention of the respondent no. 1 that, the dispute for the time being was settled before the Hon'ble Supreme Court meant that the respondent no. 1 can make the counter claim. In **Jivendra Nath Kaul (supra)**, the provisions of Section 28 (11) of the U.P. Kshettra Samitis and Zilla Parishads Adhiniyam, 1961 fell for consideration. The words used "for the time being", in such Statute was construed to mean that at the moment or the existing position. It also held that, such words indicate the actual membership in existence on the date of the motion of no confidence.
28. Applying such interpretation to the case at hand therefore, on the date, when the order dated September 13, 2013 was passed, the parties were settling all disputes between them as on September 13, 2013. No material was placed either before the learned Trial Judge or before us to suggest let alone establish that, there was

any event occurring subsequent to September 13, 2013 for the respondent no. 1 to introduce the counterclaim.

29. In our view, the order dated September 13, 2013, set at rest all disputes between the parties as on that date. Disputes prior to such date cannot and should not be permitted to be reopened. Learned Trial Judge erred in doing so.

30. Smithaben H. Patel (supra) and V. Kala Bharathi (supra) notices the provisions of order XXI Rule 1(4) of the Code of Civil Procedure, 1908 amongst others and is of the view that, adjustment of interest is to be made first awards the interest accrued and thereafter towards the principal. **Smithaben H. Patel (supra)** in addition thereto also notices the provisions of Sections 59 to 61 of the Contract Act, 1872.

31. In the facts and circumstances of the present case, since, the disputes between the parties stood settled as on September 13, 2013 and since, there was no further cause of action for the respondent no. 1 to introduce the counterclaim as done, the question of award of any amount in favour of the respondent no. 1 by the learned Trial Judge does not arise. Therefore, the question of adjustment of amount received also does not arise. Apart therefrom as on September 13, 2013, the respondent no. 1 accepted a sum of Rs.10 lakhs from the appellant.

32. In such circumstances, the appeal of the appellant is disposed of by setting aside the portion of the impugned judgment and order quantifying the amount of principal and the interest payable by

the appellant to the respondent no. 1. However, the portion of the order, which directs the payment of litigation costs to the defendant no. 3 is retained. Such retention is made since, no ground with regard thereto was canvassed in the appeal by the appellant.

- 33.** On the parity of the same reasoning as noted above, the cross-objection filed by the respondent no. 1 in the appeal, is dismissed. No order as to costs in both the proceedings.
- 34.** Appellant seeks refund of the sums lying with the Registrar, Original Side in the present appeal as also in the winding-up proceedings.
- 35.** Since, we are of the view that, the parties settled their disputes before the Hon'ble Supreme Court as noted above, it would be appropriate to direct the Registrar, Original Side to refund the sums lying with it to the credit to the winding-up proceedings as also to the appeal, along with accrued interest therein, to the appellant no. 1, subject to deduction of all legitimate cost and charges therefrom.
- 36.** Learned Advocate appearing for the appellant at this stage, submits that, a sum of Rs.50,000/- as awarded by the decree may be made over by the Registrar to the respondent no. 3 in full and final satisfaction of the decretal amount in terms of the impugned judgment and decree. Such request being reasonable, is accepted.
- 37.** Learned Registrar, Original Side is requested to make over a sum of Rs.50,000/- out of the proceeds of the sum lying with the credit

to the appeal to the respondent no. 3, towards full and final satisfaction of the decretal amount, within a period of four weeks from date.

38. AD-COM/3/2025 and OCOT/2/2026 are disposed of accordingly.

(DEBANGSU BASAK, J.)

39. I agree.

(MD. SHABBAR RASHIDI, J.)