



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1203 OF 2026**

Kopran Limited ... Petitioner
versus
Nipa Offset Printers and Anr. ... Respondents

**WITH
WRIT PETITION NO.1205 OF 2026**

Kopran Limited ... Petitioner
versus
Nipa Offset Printers and Anr. ... Respondents

**WITH
WRIT PETITION NO.1207 OF 2026**

Kopran Limited ... Petitioner
versus
Nipa Offset Printers and Anr. ... Respondents

Mr. Pradip Thorat with Mr. Pritesh A. Parmar i/by Bafna Associates, for
Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 9 FEBRUARY 2026

P.C.

1. Heard the learned Counsel for the Petitioner.
2. These Petitions under Article 227 of the Constitution of India, assail identical orders in Chamber Summons taken out by the Petitioner – original Defendant No.1 in Suit Nos.4517 of 2008, 4518 of 2008 and 4546 of 2008 seeking amendment in the written statements, so as to incorporate the Counter-claim. By the impugned orders dated 5 February 2025, the learned

Judge, City Civil Court, dismissed the Chamber Summons in the respective suits.

3. Respondent No.1 has instituted the abovenumbered suits against the Petitioner and Respondent No.2 / original Defendant No.2, for recovery of the price of the goods sold and delivered by the Respondent No.1 to the Petitioner. The Petitioner filed written statements in which set-off was claimed. However, since the Counter-claim was not specifically pleaded and the prayers were not made, the Petitioner / Defendant No.1 sought to amend the written statement so as to plead the Counter-claim and incorporate the necessary amendments.

4. The prayers in the Chamber Summons were resisted by the Respondent No.1 – Plaintiff, inter alia, on the ground that the Petitioner was seeking amendment in the written statement after the evidence of the Plaintiff was closed and the Petitioner filed its affidavit in lieu of examination in chief. The Petitioner's witness was also partly cross-examined. The Counter-claim was, otherwise, barred by limitation.

5. By the impugned orders, the learned Judge, City Civil Court, dismissed the Chamber Summons observing, inter alia, that the Defendant No.1 failed to satisfy the test of due diligence as the amendment was sought after 13 years and at the fag end of the trial.

6. Mr. Thorat, learned Counsel for the Petitioner, would submit that, by the

proposed amendment, the Petitioner was, in a sense, elaborating the defence already raised. No new defence was sought to be put forth. Inviting attention of the Court to the contentions in the original written statement, especially in regard to the set-off claimed by the Petitioner, it was submitted that the Chamber Summons could not have been dismissed on the ground of delay. Reliance was sought to be placed on the judgment of the Supreme Court in the case of **Vijay Prakash Jarath V/s. Tej Prakash Jarath**¹.

7. Evidently, the Chamber Summons seeking to incorporate amendments in the written statements so as to plead Counter-claim were moved after the evidence of the Defendants was partly recorded. This Court finds that, in the affidavit in support of the Chamber Summons, the only contention that was raised was that, another Advocate was handling the matter and, therefore, a formal prayer for set-off / counter-claim remained to be made and the requisite Court Fees remained to be paid.

8. The aforesaid explanation singularly fails to satisfy the test of due diligence. The learned Judge, City Civil Court was well within his rights in adverting to the aspect of delay, and, consequently, the interdict contained in the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (the Code), in the matter of permitting amendment in the pleading after the commencement of the trial. The jurisdictional fact of existence of the

¹ (2016) 11 SCC 800

circumstances on account of which the Defendant could not have raised the matter before the commencement of the trial in spite of due diligence, cannot be said to have been made out, and, resultantly, the bar operates (**Vidyabai and Ors. V/s. Padmalatha and Anr.**²).

9. There is another insuperable impediment in the endeavour of the Petitioner to file counter-claims, by way of amendment, at this stage. Reliance placed by Mr. Thorat on the judgment of the Supreme Court in the case of **Vijay Prakash Jarath (supra)**, does not advance the cause of the submission on behalf of the Petitioner.

10. In the case of **Vijay Prakash Jarath (supra)**, the Supreme Court set aside an order passed by the High Court declining Defendant No.3 and 4 therein, to file counter claim after two and half years of the framing of the issues. The Supreme Court noted that the Respondents/Plaintiffs' evidence was still being recorded by the trial Court when the counter-claim was filed. Nor it could be shown that any prejudice would be caused to the Plaintiffs if counter counter-claim was to be adjudicated upon alongwith the main suit. Thus, no serious injustice or irreparable loss, as expressed in para 15 of **Bollepanda P. Poonacha and Anr. V/s. K.M.Madapa**³ would be suffered by the Plaintiff in that case.

11. Noticing the difference in the enunciation of law in the aforesaid cases,

² (2009) 2 SCC 409

³ (2008) 13 SCC 179

a reference was made to the larger bench in the case of **Ashok Kumar Kalra v/s. Wing Cdr. Surendra Agnihotri and Ors.**⁴. The Supreme Court considered the following questions :

“6.1 (i) Whether Order 8 Rule 6-A CPC mandates an embargo on filing the counter-claim after filing the written statement ?

6.2 (ii) If the answer to the aforesaid question is in the negative, then what are the restrictions on filing the counter-claim after filing of the written statement ?

12. After adverting to the provisions of the Code and the precedents, the Supreme Court observed that there cannot be any hard and fast rule to say that in a particular time the counterclaim has to be filed, by curtailing the discretion conferred on the Courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counterclaim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. However, the defendant cannot be permitted to file counterclaim after the issues are framed and the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to the Code.

13. In the said case, the majority culled out the principles as under :

“21. We sum up our findings, that Order VIII Rule 6-A CPC

4 (2020) 2 SCC 394

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 counterclaim 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."

(emphasis supplied)

14. It would be contextually relevant to note that Hon'ble Mr. Justice Mohan M. Shantanagoudar, in a partly dissenting judgment, held that it is not mandatory for the counter-claim to be filed along with the written statement. The Court in its discretion may allow a counter-claim to be filed after the filing of the written statement. However, propriety requires that such discretion

should ordinarily be exercised to allow the filing of a counterclaim till the framing of issues for trial. To that extent, His Lordship agreed with the conclusion reached by the majority. However, in exceptional circumstances, a counter-claim may be permitted to be filed after a written statement till the stage of commencement of recording of the evidence on behalf of the Plaintiff.

His Lordship observed in paragraph No.57 as under :

“57. At the same time, in exceptional circumstances, to prevent multiplicity of proceedings and a situation of effective re-trial, the Court may entertain a counter-claim even after the framing of issues, so long as the Court has not started recording the evidence. This is because there is no significant development in the legal proceedings during the intervening period between framing of issues and commencement of recording of evidence. If a counter-claim is brought during such period, a new issue can still be framed by the Court, if needed, and evidence can be recorded accordingly, without seriously prejudicing the rights of either party to the suit.”

(emphasis supplied)

15. The position in law which thus emerges is that the Code does not prescribe a definite time limit for the filing of the counter-claim. Rather the restriction on the right to file counter-claim is with reference to the accrual of the cause of action. It is in the discretion of the court to allow a Defendant to file counter claim either by way of amendment in the written statement or a separate counter-claim, even post filing of the written statement. The considerations of avoiding multiplicity of proceedings, advancing the cause of

substantive justice, likelihood of prejudice and the possibility of protraction of the trial, by permitting the filing of the counter-claim at a belated stage, principally weigh with the Court in exercise of judicious discretion. It is also required to be kept in view that, generally the question of prejudice to the defendant may not arise as the defendant would have an option to pursue his cause of action in a separate suit.

16. In the case of Ashok Kumar Kalra (supra), the majority has ruled that the counter-claim shall not be permitted to be filed after framing of the issues. The minority view favours the filing of the counter-claim even after the framing of issues, in exceptional cases, till the stage of commencement of the recording of evidence on behalf of the Plaintiff. Ordinarily, the counter-claim shall not be permitted to be filed after the settlement of issues and commencement of the evidence.

17. In the case at hand, the counter-claim was proposed to be filed not only after the settlement of issues, but after the Defendant led its evidence and, in the view of the trial Court, at the fag end of the trial. In the backdrop of the explanation sought to be offered in the affidavit in support of the Chamber Summons, the test of exceptionality cannot be said to have been satisfied, even if the matter is construed rather generously.

18. In the aforesaid view of the matter, the learned Judge, City Civil Court, was well within his rights in dismissing the Chamber Summons. No

interference is warranted in exercise of the supervisory jurisdiction.

19. The Writ Petitions, thus, stands dismissed.

(N.J.JAMADAR, J.)