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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2026

PRONOUNCED ON : 30.01.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.5633 of 2025
and C.M.P.No.28196 of 2025

1.R.Radha HUF,
Rep. by its Kartha R.Radha @ Radha Ramalingam,

2.R.Radha @ Radha Ramalingam

3.R.Savithri ... Petitioners

vs.

B.Niranjani ... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set-aside the objections as such made in Check Slip dated 24.06.2025 in Filing No.COS/55/2023 in C.O.S.No.10 of 2023 on the file of the Court of the District Judge, Commercial Court, Salem by directing the Trial Court to accept the Written Statement with Counter-Claim dated 23.06.2025 on its file by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Jothi
Senior Advocate
for M/s.G.Hemath Kumar

For Respondent : Mr.Arun Anbumani
for M/s.M.Guruprasad



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the District Judge, Commercial Court, Salem in Check Slip dated 24.06.2025 in Filing No.COS/55/2023 in C.O.S.No.10 of 2023 returning the counter claim filed by the petitioners/defendants together with written statement on the ground that the counter claim was not maintainable when the suit is in the stage of trial.

2. The respondent herein filed a Commercial Suit in C.O.S.No.10 of 2023 against the petitioners for recovery of money to the tune of Rs.2,84,85,962/- based on Promissory Notes dated 07.09.2020 and 18.02.2021. The petitioners/defendants filed C.R.P.No.2123 of 2023 seeking to strike off the plaint on the ground that the plaintiff failed to exhaust the mandatory pre-litigation process under Section 12-A of the Commercial Courts Act, 2015. The said civil revision petition was heard along with other connected civil revision petitions and the plaint was ordered to be struck off for non-compliance of Section Section 12-A of the Commercial Courts Act, 2015. Aggrieved by the said order passed by this Court, the Special Leave



Petitions in S.L.P.(C).Nos.28226-28227 of 2023 were filed before the Apex Court and the same were disposed of as follows:-

“Learned senior counsel appearing for both the sides agree that not only the order of the High Court but also the order of the Commercial Court against which petition(s) under Article 227 of the Constitution of India were filed before the High Court deserves to be set aside and the two suits may proceed from the stage at which the impugned order was passed by the Commercial Court, vide order dated 28th July, 2022. Ordered accordingly.

It will be open for the parties to raise all rights and contentions available. Further the parties would be at liberty to file additional affidavit, additional evidence, additional pleadings and applications, as may be necessary, before the Commercial Court which shall proceed in accordance with law.

Interim orders, which existed prior to the impugned order, passed by the Commercial Court shall stand revived.

Applications under Order VII Rule 11 to be heard and decided first by the Trial Court before proceeding further with the suits.”

3. The order in the above said Special Leave Petitions was passed by the Apex Court on 13.08.2024. Since the Apex Court granted liberty to the



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parties to file additional pleadings, utilising the same, the petitioners filed their written statement on 10.09.2024, the copy of the same is included in Serial No.1 in the typed-set of papers filed by the respondents dated 13.11.2025. It is also seen from the typed-set of papers that as per the direction issued by the Apex Court, the petition for rejection of the plaint was taken up for consideration and the same was dismissed by the Trial Court. Aggrieved by the same, the petitioners filed civil revision petition in C.R.P.No.2506 of 2025 before this Court and the same came to be dismissed on 19.09.2025. In the meantime, the petitioners/defendants filed yet another written statement on 24.06.2025 along with counter claim seeking recovery of Rs.98,76,912/- from the respondent/plaintiff. The said written statement together with counter claim was returned by the Trial Court on the ground that the counter claim was not maintainable at the stage of trial. Aggrieved by the said order, the petitioners have come before this Court.

4. Mr.N.Jothi, learned Senior Counsel appearing for the petitioners submitted that the Trial Court appeared to have returned the counter claim on the ground that outer time limit of 120 days for filing of written statement in Commercial Courts got expired. He further submitted that in Special Leave Petitions order referred above, the Hon'ble Apex Court permitted the



parties to file additional pleadings and therefore, by virtue of liberty granted by the Apex Court, the petitioners are entitled to file written statement together with counter claim and the liberty granted by the Apex Court has been overlooked by the Trial Court. The learned Senior Counsel further submitted that the outer time limit of 120 days fixed for filing written statement as per the amended Code of Civil Procedure applicable to the Commercial Courts is only for filing of written statement and the same cannot be extended to filing of counter claim by the defendants. In this regard, the learned Senior Counsel relied on the title portion of Order 8 of Code of Civil Procedure, which reads as follows:-

“ WRITTEN STATEMENT, SET-OFF AND COUNTER CLAIM”

5. The learned Senior Counsel further submitted that legislature consciously utilised a Comma to separate the expression ‘Written Statement’ with the expression ‘Set-Off’ and ‘Counter Claim’. The learned Senior Counsel emphasised that the employment of Comma implies that Written Statement is different from Set-Off and Counter Claim and therefore, the outer time limit prescribed for filing written statement cannot be extended to



filing of set-off and counter claim. In support of his argument, the learned Senior Counsel appearing for the petitioners relied on the following judgments:-

- (i) ***Collector, Land Acquisition, Anantnag and another vs. Katiji and others*** reported in ***(1987) 2 SCC 107***.
- (ii) ***Pepsi Foods Ltd and another vs. Special Judicial Magistrate and others*** reported in ***1998 SCC (Cri) 1400***.
- (iii) ***Kamal Haasan and another vs. Regent Saimira Entertainment Ltd and another*** reported in ***2022 (3) CTC 337***.
- (iv) ***Saraswathi Chemicals, Vijayawada vs. State of A.P.*** reported in ***2001 SCC Online AP 881***.
- (v) ***Aakansha Monga vs. The Honble High Court of Delhi and others*** reported in ***2014 SCC Online Del. 1246***.
- (vi) ***K.Meenakshi Sundaram vs. V.Selvi C.K.Chandra*** reported in ***2000 A I H C 2721***.
- (vii) ***Mahendra Kumar and another vs. State of Madhya Pradesh and others*** reported in ***(1987) 3 SCC 265***.
- (viii) ***Mohan Lal and others vs. Bhawani Shankar and another*** reported in ***AIR 2002 Rajasthan 144***.



(ix) ***K.Prabhakaran vs. A.G.Krishnamoorthy*** reported in **2002 (2) CTC 398.**

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(x) ***Sugesan and Co. Pvt. Ltd, Madras vs. Hindustan Machine Tools Ltd, Hyderabad*** reported in **AIR 2004 Andhra Pradesh 428.**

(xi) ***Shanmugam vs. Vijayarangam and another*** reported in **2004-4-L.W.699.**

(xii) ***Kailash vs. Nanhku and others*** reported in **2005 (3) CTC 355.**

(xiii) ***S.Murugesan vs. V.Vijay Sai and others*** reported in **2006 (5) CTC 560.**

(xiv) ***S.Thirugnanasambandam vs. Kaliyaperumal Chettiar*** reported in **2008 (1) CTC 369.**

(xv) ***A.Nandagopala Krishnan vs. Antony*** reported in **2012 (4) CTC 807.**

(xvi) ***Jitendra Kumar Khan and others vs. Peerless General Finance and Investment Company Ltd and others*** reported in **(2013) 8 SCC 769.**

(xvii) ***Dr.K.Rajasekaran and others vs. M.Rajeswari*** reported in **2014-2-L.W.1015.**

(xviii) ***Vijay Prakash Jarath vs. Tej Prakash Jarath*** reported in **2016 (2) CTC 442.**



(xix) ***SCG Contracts (India) Private Limited vs. K.S.Chamankar***

Infrastructure Private Limited and others reported in ***(2019) 12 SCC 210.***

(xx) ***M/s.Ayyan Fire Work Factory Private Limited through its Managing Director Abiruban vs. Govindammal*** reported in ***2019-4-L.W.-909.***

(xxi) ***Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others*** reported in ***(2020) 2 SCC 394.***

(xxii) ***Nilesh Suresh Kene and others vs. Ashok Durga Pillay and others*** reported in ***AIR 2025 Bombay 94.***

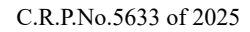
6. The learned counsel appearing for the respondent submitted that based on the liberty granted by the Apex Court in the Special Leave Petitions, the petitioners filed the written statement on 10.09.2024 and therefore, they are not entitled to file another written statement on 24.06.2025, which includes counter claim. The learned counsel also submitted that the issues in the present Commercial Suit were framed on 21.06.2025 and thereafter, the petitioners filed present counter claim in the form of second written statement on 24.06.2025. The learned counsel further submitted that after settlement of issues, the petitioners/defendants are not



entitled to file counter claim as per the decision of the Apex Court in ***Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others*** reported in ***(2020) 2 SCC 394***.

7. In support of his contention, the learned counsel for the respondent relied on the following judgments:-

- (i) ***Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others*** reported in ***(2020) 2 SCC 394***.
- (ii) ***P.Sreenivasulu Reddy and another vs. U.Vishwanatha Reddy and others*** reported in ***MANU/TN/9125/2022 : 2023 (1) CTC 342***.
- (iii) ***SCG Contracts (India) Private Limited vs. K.S.Chamankar Infrastructure Private Limited and others*** reported in ***(2019) 12 SCC 210***.
- (iv) ***Vijay Prakash Jarath vs. Tej Prakash Jarath*** reported in ***2016 (2) CTC 442***.



referred above granted liberty to the parties to file additional pleadings.

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9. The Apex Court in **Ashok Kumar Kalra** case cited supra, categorically held that counter claim can be filed even after filing of the written statement by the defendant. The same can be gathered from the observation of the Apex Court in the above mentioned case law, which reads as follows:-

“21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action.”

10. Therefore, it is clear that there is no embargo for the defendants to file counter claim even after filing of the written statement. In other words, there is no duty cast upon the defendants to file counter claim together with written statement. Even after filing of the written statement, they are entitled to file counter claim. However, the cause of action for counter claim should have arisen prior to the delivery of defence (i.e., filing of written statement).



11. In the above mentioned case law, the Three Member Bench of the Apex Court categorically held that outer time limit for filing counter claim is the date on which issues are framed. Therefore, after settlement of issues, the defendants are not entitled to file counter claim. The relevant observation of the Apex Court reads as follows:-

“21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim 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 counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, 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.*



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(v) *Similarity of cause of action between the main suit and the counterclaim.*

(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 by this Court)

12. Therefore, it is clear that even though the defendants are entitled to file counter claim after filing of the written statement, the outer time limit for filing counter claim is the date on which issues are settled. In the case on hand, the issues were settled on 21.06.2025, the certified copy of the proceedings dated 21.06.2025 reads as follows:-

“This suit coming on this day for hearing before me in the presence of Thiru.A.S.Anbu, Advocate for the Plaintiff and Thiru.P.Jawahar, Advocate for Defendant and it is ordered that the following issues are framed,

ISSUES

1) Whether the claim made by the plaintiff is in compliance to the rules pertaining to a Money lender?

2) Whether the plaintiff is entitled to the claim on the basis of



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the suit promissory notes as prayed?

3) To what order relief?

Issues framed. Trial by 24.06.2025.”

13. Therefore, it is clear that after settlement of the issues, when the suit was posted for trial, the petitioners herein filed yet another written statement, which contains counter claim. As per the law laid down by the Three Member Bench of the Apex Court in **Ashok Kumar Kalra** case cited supra the counter claim filed by the petitioners cannot be entertained, as it was filed subsequent to the settlement of issues.

14. The Trial Court rightly appreciated the said legal position and returned the counter claim by stating that the counter claim is not maintainable at this stage. I do not find any error in the order passed by the Trial Court in returning the counter claim filed by the petitioners. Therefore, though I agree with the submission made by the learned Senior Counsel appearing for the petitioner that the time limit of 120 days fixed under Proviso to Order 8 Rule 1 of Code of Civil Procedure as applicable to the Commercial Courts is restricted to filing of written statement alone and the same cannot be extended for filing of counter claim by the defendants, in

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view of the law settled by Three Member Bench of the Apex Court in *Ashok Kumar Kalra* case cited supra, the petitioners are not entitled to file counter claim after settlement of issues in the suit. Since this Court is bound by the law laid down by the Apex Court in *Ashok Kumar Kalra* case, the other case laws relied on by the learned Senior Counsel appearing for the petitioners will not advance the case of the petitioners.

15. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

30.01.2026

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
dm

To

The District Judge,
Commercial Court, Salem.



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S.SOUNTHAR, J.

dm

Pre-delivery order made in
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