



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 11<sup>TH</sup> DAY OF FEBRUARY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR**

**WRIT PETITION NO. 30832 OF 2025 (GM-CPC)**

**BETWEEN:**

M/S. VISTAS INVESTMENT PVT. LTD.,  
HAVING ITS REGISTERED ADDRESS AT  
NO. 41, 2<sup>ND</sup> CROSS, 8<sup>TH</sup> 'A' MAIN  
4<sup>TH</sup> BLOCK, KORAMANGALA,  
BENGALURU – 560 034.  
AUTHORIZED REPRESENTATIVE  
MR. JAGDHISH CHANDER PANDEY.

...PETITIONER

(BY SRI. SHREYAS JAYASIMHA, ADVOCATE)

**AND:**

1. M/S. TRANSYS GLOBAL FORWARDING PVT  
THROUGH ITS AUTHORIZED REPRESENTATIVE,  
MR. GIRISH. V,  
HAVING REGISTERED ADDRESS AT  
NO. 202, 2<sup>ND</sup> FLOOR, 1<sup>ST</sup> AA CROSS  
2<sup>ND</sup> MAIN ROAD, EAST OF NGEF LAYOUT,  
KASTURINAGAR, BENGALURU - 560 043.

2. DABBALA SUKADA REDDY - DIRECTOR  
VISTAS INVESTMENT PVT. LTD.,  
NO.41, 2<sup>ND</sup> CROSS, 8<sup>TH</sup> A MAIN,  
4<sup>TH</sup> BLOCK, KORAMANGALA,  
BENGALURU 560 034.

3. PRIANKA REDDY DEVGAN - DIRECTOR  
M/S. VISTAS INVESTMENT PVT LTD.,  
NO.41, 2<sup>ND</sup> CROSS, 8<sup>TH</sup> A MAIN,  
4<sup>TH</sup> BLOCK, KORAMANGALA,  
BENGALURU 560 034.

...RESPONDENTS

(BY SRI. NIKHIL K., ADVOCATE FOR R-1  
R-2 AND R-3 ARE SERVED)





THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD 25.06.2025 ON IA NO. 3 PASSED BY THE HONBLE LXXXIX ADDL. CITY CIVIL AND SESSIONS JUDGE (COMMERCIAL COURT), BENGALURU (CCH-90) IN COM. OS NO. 1408/2023 (ANNX-A) & ETC.,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

**ORAL ORDER**

This petition by the defendant in Com.O.S.No.1408/2023 is directed against the impugned order dated 25.06.2025 passed on I.A.No.3 by the commercial court, wherein the said application filed by the petitioner seeking amendment of the written statement by incorporating a counter claim was rejected by the commercial court by holding that in the light of the Three Judges Bench judgment of the Apex Court in the case of ***Ashok Kumar Kalra vs. Wing CDR.Surendra Agnihotri and others – (2020) 2 SCC 394***, the counter claim by way of proposed amendment sought to be incorporated beyond 04.02.2025 subsequent to the 1<sup>st</sup> respondent – plaintiff having commenced his evidence by way of Affidavit in lieu of examination-in-chief on 07.01.2025 was dismissed by the commercial court by holding as under:-

*“The plaintiff has filed this suit praying the Court to pass a judgment and decree against the defendants*



*directing them to pay a sum of ₹.2,83,78,966/- along with the interest @ 18% p.a. from the date of filing the suit to the actual realization of the claim amount; such other orders as this Court may deem fit and proper in the nature and circumstances of the present case be passed in the interest of justice.*

*02. After issuance of summons the defendants have put forth their appearance before the Court through their counsel and filed written statement.*

**ORDERS ON IA NO.3**

*03. The defendants have filed IA No.3 under Order VI Rule 17 of CPC R/w Section 151 of CPC praying this Court to permit the defendants to carry out the following amendments in the written statement as detailed below in this application in the interest of justice and equity.*

*1. Add paragraph 14A after para 14, at page No. 3 as follows:*

*"It is pertinent to note that Defendant No. I did not instruct BZM to withhold the containers at Dar es Salaam. There should have been no delay in the release of the containers after the client/consignee 01.06.2022 nor was authorized to issue such instructions. Regardless of this lack of authorization, there should have been no delay in the release of the containers after 01.06.2022"*

*2. Add paragraph 21A after para 21, at page No. 5 as follows:*

*"The High Court of Tanzania on 10.09.2024, allowed the counter claim filed by Defendants against the agent of the Plaintiff. BZM for the claim of USD 642,250. In the interest of full*



*disclosure BZM have issued a notice intending to appeal the aforementioned decision and the Defendants herein have also initiated execution Proceedings."*

3. Add para 44, 45 as follows:

**COUNTER CLAIM**

*"44. It is submitted that the Defendant No.1 on the basis of a written assurance by the Plaintiff by way of the email dated 12.10.2022 (produced as Document No.2), proceeded to release payments to the tune of USD 642,250 which is in excess of the amounts Claimed by the Plaintiff."*

*03. The Plaintiff has also acknowledged the receipt of the aforementioned amount of USD 642.250 via email dated 17.03.2023 which included an attachment indicating the workings surrounding the transactions A copy of the email dated 17.03.2023 has been produced along with the present as well as along with a separate application seeking production of additional documents. However, the Plaintiff has failed to carry out the reconciliation as assured. The Plaintiff, therefore, is liable to reconcile the amount of USD 642.250 with the claimed amount of Rs.2.83,78,966.80/- and refund the excess amount paid by Defendant 1. which totals Rs. 2,75,90,358/-"*

4. Add para 46 as follows:

*"The cause of action for the counter claim arose 12.10.2022 when the Plaintiff assured that the excess amounts paid by Defendants would be reconciled by them and on 17.03.2023 when the when the Plaintiff acknowledged the receipt of the excess amounts i.e., USD 642,250"*



5. Add para 47 as follows:

*"The Hon'ble Court has the pecuniary and territorial jurisdiction to try the counter claim. The suit is valued at Rs.2,75,90,358 and the requisite court of Rs. 3,45,076 is paid."*

6. In the Prayer, add as follows:

*Wherefore, it is humbly prayed that this Hon'ble Court may be please to:*

*a. Pass a Decree against the Plaintiff directing the Plaintiff to refund the excess amount of Rs. 2,75,90,358/-*

*Pass any other order as the Court deems fit.*

*04. In support of IA No.3 Priyanka Reddy Devgan, the Director of defendant No.1 has sworn to an affidavit. In the said affidavit she has averred that the defendants have filed their written statement on 02.09.2024 by placing reliance on documents requisite for the purpose of establishing a defense. That, in the written statement the defendants have categorically stated that they have made payments in excess to the amounts being claimed by the plaintiff.*

*05. That, the agent of the plaintiff viz., BZM had initiated Court proceedings against the plaintiff, the and its clients before the High Court of Tanzania claiming USD 234,000/- towards pending shipping line container detention, storage charges, warehouse, rent charges and additional transport costs, along with USD 20,000/- as loss of profits.*

*06. That, the defendants had preferred a counter claim which included the payment of USD 642,250/-along with other reliefs. That, the High Court of Tanzania on 10.09.2024*



*proceeded to reject the claims and allowed the counter claims by directing BZM to refund the amount of USD 642,250.*

*07. That, the plaintiff, being the counterpart of BZM and having instructed the latter to assist in forwarding the goods, are obligated and are responsible for the actions carried out by BZM. That, the plaintiff having volunteered to indemnify the defendants from financial liability, cannot now seek to backtrack and retrace their steps. That, the plaintiff is jointly and severally liable for the actions of BZM, in view of the assurance granted as well as the admission of having received the amount of USD 642,250.*

*08. That, the defendant was not able to file the counter claim along with written statement as there were significant cost implications on the defendant and were required to obtain requisite approvals for proceeding with the counter claim.*

*09. That, the proposed amendments are not made with any intent to cause delay or prejudice to the plaintiff and have been filed at the earliest possible opportunity. The amendments are essential for the proper adjudication of the matter.*

*10. That, there is no new cause of action that has been set up and these defendants are not seeking to retract any admissions that may have been made in the written statement. That, amendment is being introduced at the earliest opportunity before the commencement of the trial.*



*11. That, no hardship, loss and irreparable injury will be caused to the plaintiff if the accompanying application is allowed. Per contra, the defendant will be put to undue hardship, loss and irreparable injury and will lead to multiplicity of suits if this application is not allowed. By contending so, the defendants prayed to allow the application.*

*12. On the other hand the plaintiff has filed the objections contending that the present application filed by the defendants seeking amendment of the written statement to introduce a counter claim is wholly misconceived, mala fide and deserves to be dismissed with exemplary costs. That, the application is nothing but a deliberate attempt to delay the proceedings and circumvent the summary procedure prescribed under Order XXXVII of the CPC.*

*13. That the present suit was originally filed under Order XXXVII CPC which provides for summary procedure in commercial matters where there exists an admitted liability. The very purpose of Order XXXVII is to ensure expeditious disposal of commercial matters and prevent delays through procedural tactics. The introduction of a counterclaim at this belated stage would defeat the entire purpose of the summary procedure and convert this summary suit into a regular suit, causing serious prejudice to the Plaintiff.*

*14. That the Defendants were allowed conditional leave to defend and have filed their written statement on 02.09.2024. Thereafter, the Plaintiff has filed their Affidavit in lieu of examination in chief and the matter con was fixed for*



*cross examination of the Plaintiff's witness No.1. It was only then that the Defendant belatedly chose to me the present application seeking amendment to includes counterclaim. The timing of this application itself reveals its malafide nature and dilatory practice adopted by the Defendants. If the Defendants had a genuine counterclaim nothing prevented them from including it in their written statement.*

*15. The proposed introduction of Para 21A regarding proceedings in Tanzania is completely irrelevant to the present proceedings and appears to be inserted only to prejudice this Court. The Defendants themselves admit that the said order is subject to appeal. Moreover, the proceedings in Tanzania involve BZM Logistics, a separate legal entity that is not even a party to the present proceedings. The attempt to import proceedings from a foreign jurisdiction into this summary suit be through the backdoor of amendment cannot permitted.*

*16. The most egregious aspect of the present application is the attempt to introduce a counterclaim through paras 44 and 45. This proposed counterclaim suffers from multiple fatal defects. Firstly, it is based on unsubstantiated claims of excess payment without any concrete, evidence. The alleged email communications referred to are neither properly proved nor the calculations forming the basis of the claim of USD 642,250.00 are neither explained nor supported by any documentary evidence. The attempt to convert foreign currency transactions into Indian Rupees*



*without proper basis or exchange rate calculations further demonstrates the casual approach of the Defendants.*

*17. That the Defendants themselves have unequivocally confirmed the outstanding liability of Rs.2,83,78,966/ through their Ledger Confirmation dated 28.12.2023. This admission of liability has never been disputed or challenged by the Defendants. The nine invoices raised by the Plaintiff have been accepted without any protest or objection. It is only after the institution of this suit that the Defendants have suddenly discovered this alleged excess payment. This conduct clearly demonstrates that the counterclaim is nothing but an afterthought to delay the proceedings. By contending so, the plaintiff prays to dismiss the application with exemplary cost.*

*18. I have heard the arguments addressed by the learned counsel for the plaintiff and defendants.*

*19. The counsel for plaintiff relied upon the decisions reported in **2020 (2) SCC 394, 2009(10) SCC 84.***

*20. Now the points that arise for my consideration are as under:*

*01. Whether the applicant/defendants have made out a ground so as to allow IA No.3?*

*02. What Order?*

*21. My findings on the above Points are as under:*

*POINT No.1: In the **NEGATIVE***

*POINT No.2: As per final Order for the following*

**REASONS**



22. **POINT No.1:** *Keeping in mind the application averments and the amendment which is intended to be carried out by the defendants, I would like to bestow my attention to the provisions under Order VI Rule 17 of CPC and the well settled principle of law laid down by the Hon'ble Apex Court relating to the amendments of pleadings.*

**ORDER VI Rule 17 of CPC reads as under:**

*[17. Amendment of pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

*Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.*

23. *The Hon'ble Apex Court recently in an unreported decision in SLP (Civil) No.30324/2019 dated 24.09.2024 in between Dinesh Goyal @ Pappu Vs. Suman Agarwal (Bindal) & Ors., has reiterated the well settled law of amendments and observed as follows:*

**11. At this juncture, before proceeding to the merits of the case, let consider the law relating to the us amendments of pleadings.**

**11.1 The settled rule is that the Courts should adopt a liberal approach in granting leave however, to amend pleadings, the same cannot be in contravention of the statutory boundaries placed on such power.**



*In North Eastern Railway Administration, Gorakhpur v. Bhagwan Das it was held as under:*

*"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings.*

*In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been but the correct, originally amendment would cause him an injury which could not be compensated in costs. [Also see Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar (1990) 1 SCC 166.]"*

*11.2 Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr., after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:-*

*(i) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.*

*(ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.*

*(iii) Amendments, while generally should be allowed, the same should be disallowed if*



***(a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.***

***(b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)***

***(c) The amendment completely changes the nature of the suit;***

***(d) The prayer for amendment is malafide,***

***e) By the amendment, the other side should not lose a valid defence.***

***(iv) Some general principles to be kept in mind are –***

***(I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs.***

***(II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.***

***(III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint.***

*24. Keeping in mind the well settled principle of law I have carefully perused the amendment which is intended to be carried out by the defendants herein. Admittedly, the defendants herein intends to amend some of the facts pertaining to one of the entity viz., BZM which is not at all a party to this proceedings.*

*25. The proposed amendment is pertaining to a legal proceedings which took place before the High Court of Tanzania and also sought counter claim stating that they*



*have paid the plaintiffs in excess and therefore the defendants claim refund of the same.*

*26. On face of it, the proposed amendments are not at all tenable in the eye of law as the defendants failed to assign any reason as to why the said facts were not introduced at the earliest point of time. Admittedly, the present suit filed by the plaintiff is under Order XXXVII of CPC seeking for summary judgment based upon the liability which is admitted by the defendants.*

*27. In this case the defendants were permitted to file a written statement subject to condition. If the defendants genuinely had their right to claim the counter claim they would have filed the counter claim along with written statement itself. In this case, Issues have already been framed on 16.11.2024 and the law laid down by **Hon'ble Apex Court** reported in **2020 (2) SCC 394 in Ashok Kumar Kalra** relied upon by the counsel for plaintiff makes it clear that the counter claim cannot be CIVIL AND crry allowed alter framing of Issues.*

*28. It is pertinent to take note that the Hon'ble High Court of Karnataka recently relied upon the ratio laid down in Ashok Kumar Kalra case and held that counter claim is not maintainable once Issues are framed by the Court. In view of the above well settled principle of law, I am of the firm opinion that the defendants herein cannot amend the written statement averments by incorporating the counter claim. Admittedly, even though the defendants in the proposed amendment has mentioned that they have paid Court Fee*



*upon the counter claim, however on perusal of the order sheet it appears the defendants have not paid any Court Fee upon the counter claim. Hence, the defendants have not made out any ground to seek proposed amendment in their written statement.*

*29. The available pleading on record in the written statement is sufficient to adjudicate the dispute amongst the parties. Hence, the application filed by the defendants deserves to be dismissed. Accordingly, I answer the above point No.1 in the **NEGATIVE**.*

*30. **POINT No.2:** In view of the above discussions on Point No.1, I proceed to pass the following:*

**ORDER**

*The IA No.3 filed by the defendants under Order VI Rule 17 of CPC R/w Section151 of CPC is hereby dismissed.”*

2. Heard learned counsel for the petitioner and learned counsel for 1<sup>st</sup> respondent and perused the material on record. Though the notice of this petition has been served on respondents 2 and 3, they remained absent and unrepresented.

3. A perusal of the material on record will indicate that in the aforesaid suit, the petitioner filed the written statement and is contesting the suit. The issues were framed on 16.11.2024 and the matter was posted for trial on 07.01.2025, on which date, the 1<sup>st</sup>



respondent – plaintiff commenced his evidence by filing an Affidavit in lieu of examination-in-chief of PW-1 and the matter was posted for cross-examination of PW-1 and the petitioner – 1<sup>st</sup> defendant having partially cross-examined PW-1 and when the matter was set down for cross-examination of PW-1 on 04.02.2025, on which date, the petitioner – 1<sup>st</sup> defendant filed the instant application under Order 6 Rule 17 CPC seeking amendment of the written statement by introducing the counter claim. Accordingly, the commercial court took note of the aforesaid judgment of the Apex Court wherein, the majority view held that the upper / outer limit for seeking counter claim would come to an end upon framing of issues but the minority view held that the time would be extendable up to the maximum limit / time of commencement of plaintiff's evidence which also stood expired in the instant case and accordingly, the commercial court dismissed the application.

4. In ***Ashok Kumar Kalra's case supra***, the Apex Court held as under:-

*“ N.V. RAMANA, J. (for himself, Shantanagoudar and Rastogi, JJ.; Shantanagoudar partly supplementing and partly dissenting as well)— Questions about procedural justice are remarkably persistent and usual in the life of*



*Common Law Courts. However, achieving a perfect procedural system may be feasible or affordable, rather more manageable standards of meaningful participation needs to be aspired while balancing cost, time and accuracy at the same time.*

*2. The present reference placed before us arises out of the order dated 10-9-2018 passed by a two-Judge Bench of this Court, wherein clarification has been sought as to the interpretation of Order 8 Rule 6-A of the Civil Procedure Code (hereinafter referred to as "CPC"), regarding the filing of counterclaim by a defendant in a suit. The reference order dated 10-9-2018 is extracted below:*

*"3. The papers to be placed before the Hon'ble Chief Justice of India for constitution of a three-Judge Bench to look into the effect of our previous judgments as well as whether the language of Order 8 Rule 6-A of the Civil Procedure Code is mandatory in nature."*

*3. Before we proceed further, we need to allude to the brief factual background necessary for the disposal of this reference. A dispute arose between the petitioner (Defendant 2) and Respondent 1 (plaintiff) concerning performance of agreement to sell dated 20-11-1987 and 4-10-1989. Respondent 1 (plaintiff) filed the suit for specific performance against the petitioner (Defendant 2) on 2-5-2008. Petitioner (Defendant 2) herein filed a written statement on 2-12-2008 and counterclaim on 15-3-2009, in the same suit. By order dated 15-5-2009, the trial court rejected the objections, concerning filing of the counterclaim after filing of the written statement and framing of issues. Order dated 15-5-2009 was*



*challenged before the High Court, in Civil Revision No. 253 of 2009 the High Court allowed [Surendra Agnihotri v. Moti Ram Jain, 2018 SCC OnLine All 991] the same and quashed the counterclaim. Aggrieved by the aforesaid order of the High Court, the petitioner (Defendant 2) herein approached the Division Bench of this Court, which has referred [Ashok Kumar Kalra v. Surendra Agnihotri, 2018 SCC OnLine SC 3497] the matter to a three-Judge Bench.*

*4. The learned counsel appearing on behalf of the petitioner submitted that the intent behind Order 8 Rule 6-A CPC is to provide an enabling provision for the filing of counterclaim so as to avoid multiplicity of proceedings, thereby saving the time of the courts and avoiding inconvenience to the parties. Therefore, no specific statutory bar or embargo has been imposed upon the court's jurisdiction to entertain a counterclaim except the limitation under the said provision which provides that the cause of action in the counterclaim must arise either before or after the filing of the suit but before the defendant has delivered his defence. The learned counsel also submitted that if permitting the counterclaim would lead to protracting the trial and cause delay in deciding the suit, the court would be justified in exercising its discretion by not permitting the filing of the counterclaim. Relying on the judgments of this Court in Salem Advocate Bar Assn. (2) v. Union of India [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344 : AIR 2005 SC 3353] , and Jai Jai Ram Manohar Lal v. National Building Material Supply [Jai Jai Ram Manohar Lal v. National Building Material Supply, (1969) 1 SCC 869] , the*



*learned counsel lastly submitted that rules of procedure must not be interpreted in a manner that ultimately results in failure of justice.*

*5. On the other hand, the learned Senior Counsel for the respondent submitted that the language of the statute, and the scheme of the Order, indicates that the counterclaim has to be a part of the written statement. The learned Senior Counsel strengthened the above submission by relying on the statutory requirement that the cause of action relating to a counterclaim must arise before the filing of the written statement, and submitted that the counterclaim must therefore form a part of the written statement. The learned Senior Counsel also relied on the language of Order 8 Rule 6 CPC, which requires a defendant's claim to set-off to be a part of the written statement, to suggest that the same rules should also apply to the filing of a counterclaim, keeping in mind the placement of the provision relating to counterclaim in Order 8 Rule 6-A CPC.*

*6. We have heard the learned counsel on either side at length and perused the material available on record. In the light of the reference and the arguments advanced on behalf of the parties, the following issues arise for consideration before this Court:*

*6.1.(i) Whether Order 8 Rule 6-A CPC mandates an embargo on filing the counterclaim 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 counterclaim after filing of the written statement?*



HC-KAR

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*7. At the outset, there is no gainsaying that the procedural justice is imbibed to provide further impetus to the substantive justice. It is this extended procedural fairness provided by the national courts, which adds to the legitimacy and commends support of the general public. On the other hand, we must be mindful of the legislative intention to provide for certainty and clarity. In the name of substantive justice, providing unlimited and unrestricted rights in itself will be detrimental to certainty and would lead to the state of lawlessness. In this regard, this Court needs to recognise and harmoniously stitch the two types of justice, so as to have an effective, accurate and participatory judicial system.*

*8. Having observed on nuances of procedural justice, we need to turn our attention to the Order 8 of the CPC, which deals with written statement, set-off and counterclaim. Rules 1 to 5 of Order 8 CPC deal with the written statement. This Order dealing with the written statement was amended extensively by the Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002) (hereinafter referred to as "Act 22 of 2002"), whereby the defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence. In case he fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.*



*9. Order 8 Rule 6 CPC specifies the particulars of set-off to be given in written statement and the same reads as under:*

**Order 8 Rule 6:**

**“6. Particulars of set-off to be given in written statement.**—(1) *Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the court, present a written statement containing the particulars of the debt sought to be set off.*

*(2) **Effect of set-off.**—The written statement shall have the same effect as a plaint in a cross-suit so as to enable the court to pronounce a final judgment in respect both of the original claim and of the set-off; but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.*

*(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.”*

*10. Order 8 Rule 6-A, which pertains to the counterclaim, reads as under:*

**Order 8 Rule 6-A:**

**“6-A. Counterclaim by defendant.**—(1) *A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counterclaim against the*



*claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counterclaim is in the nature of a claim for damages or not: Provided that such counterclaim shall not exceed the pecuniary limits of the jurisdiction of the court.*

*(2) Such counterclaim shall have the same effect as a cross-suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counterclaim.*

*(3) The plaintiff shall be at liberty to file a written statement in answer to the counterclaim of the defendant within such period as may be fixed by the court.*

*(4) The counterclaim shall be treated as a plaint and governed by the rules applicable to plaints.”*

**11.** *Thus, as per Order 8 Rule 6 CPC, the defendant can claim set-off of any ascertained sum of money legally recoverable by him from the plaintiff, against the plaintiff's demand, in a suit for recovery of money. Whereas, Rule 6-A deals with counterclaim by the defendant, according to which a defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counterclaim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after filing of the suit but before the defendant has delivered his defence or before the time prescribed for delivering his defence has expired, whether*



*such counterclaim is in the nature of a claim for damages or not.*

*12. The counterclaim shall be treated as a plaint and governed by the rules applicable to plaints. Order 8 Rule 6-G says that the rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counterclaim. As per Rule 8, 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 counterclaim may be raised by the defendant or plaintiff, as the case may be, in his written statement. Rule 9 of Order 8 prohibits presentation of pleadings subsequent to the written statement of a defendant other than by way of defence to set-off or counterclaim, except by the leave of the court, and upon such terms as the court thinks fit; and the provision further stipulates that the court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same. This amendment with respect to subsequent pleadings was made to CPC by way of Act 22 of 2002. At the cost of repetition, we may note the conditions for filing a counterclaim under Order 8 Rule 6-A:*

*(i) Counterclaim can be for claim of damages or otherwise.*

*(ii) Counterclaim should relate to the cause of action, which may accrue before or even after filing the suit.*

*(iii) If the cause of action in the counterclaim relates to one accrued after filing of suit, it should be one accruing*



*before filing of the written statement or the time given for the same.*

*When we look at the whole scheme of Order 8 CPC, it unequivocally points out at the legislative intent to advance the cause of justice by placing embargo on the belated filing of written statement, set-off and counterclaim.*

**13.** *We have to take note of the fact that Rule 6-A was introduced in CPC by the Code of Civil Procedure (Amendment) Act of 1976 (104 of 1976), and before the amendment, except in money suits, counterclaim or set-off could not be pleaded in other suits. As per the recommendation of the Law Commission of India, to avoid multiplicity of proceedings, the counterclaim by way of Rule 6-A was inserted in the Civil Procedure Code. The Statement of Objects and Reasons for enacting the Code of Civil Procedure (Amendment) Act, 1976 (104 of 1976), were—*

*(1) A litigant should get a fair trial in accordance with the accepted principles of natural justice.*

*(2) Every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;*

*(3) The procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases.*

**14.** *Before we proceed further, we deem it appropriate to note that any provision under the procedural law should not be construed in such a way that it would leave the court helpless (refer to Salem Advocate Bar Assn. case In fact, a*



HC-KAR

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*wide discretion has been given to the civil court regarding the procedural elements of a suit. As held by this Court, procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice.*

**15.** *Now we need to observe certain earlier judgments of this Court which have dealt with Order 8 Rule 6-A. In Mahendra Kumar v. State of M.P. [Mahendra Kumar v. State of M.P., (1987) 3 SCC 265] , (hereinafter referred to as Mahendra Kumar case), where the appeals were preferred against concurrent findings of the courts below in dismissing the counterclaim as barred under Section 14 of the Treasure Trove Act, 1878, this Court, while considering the scope of Rule 6-A(1) of Order 8 CPC, has held that on the face of it, Rule 6-A(1) does not bar the filing of a counterclaim by the defendant after he had filed the written statement. As the cause of action for the counterclaim had arisen before the filing of the written statement, the counterclaim was held to be maintainable. This Court further observed that under Article 113 of the Limitation Act, 1963, the period of limitation is three years from the date of the right to sue accrues, when the period of limitation is not provided elsewhere in the Schedule. As the counterclaim was filed within three years from the date of accrual of the right to sue, this Court held that the learned District Judge and the High Court were wrong in dismissing the counterclaim. The issue concerning applicability of limitation period for filing the counterclaim was also discussed in Jag Mohan Chawla v. Dera Radha Swami Satsang [Jag Mohan Chawla v. Dera Radha Swami Satsang, (1996) 4 SCC 699] and Shanti Rani Das Dewanjee v. Dinesh*



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*Chandra Day [Shanti Rani Das Dewanjee v. Dinesh Chandra Day, (1997) 8 SCC 174].*

**16.** *In Vijay Prakash Jarath v. Tej Prakash Jarath this Court directed the court below to entertain the counterclaim which was filed 2½ years after framing of issues, as the evidence was still pending and this Court felt that no prejudice would be caused to the plaintiff. However, in Bollepanda P. Poonacha v. K.M. Madapa [Bollepanda P. Poonacha v. K.M. Madapa, (2008) 13 SCC 179] (hereinafter referred as “Bollepanda Poonacha case”), this Court while referring to Ramesh Chand Ardawatiya v. Anil Panjwani [Ramesh Chand Ardawatiya v. Anil Panjwani, (2003) 7 SCC 350] , discouraged the belated filing of counterclaims. Further, the Court elucidated on the serious harm caused by allowing such delayed filing. In any case, in Bollepanda P. Poonacha [Bollepanda P. Poonacha v. K.M. Madapa, (2008) 13 SCC 179] , the Court could not expound any further as the counterclaim was rejected on the basis that the cause of action had arisen after the filing of the written statement.*

**17.** *The time limitation for filing of the counterclaim, is not explicitly provided by the legislature, rather only limitation as to the accrual of the cause of action is provided. As noted in the above precedents, further complications stem from the fact that there is a possibility of amending the written statement. However, we can state that the right to file a counterclaim in a suit is explicitly limited by the embargo provided for the accrual of the cause of action under Order 8 Rule 6-A. Having said so, this does not mean that counterclaim can be filed at any time after filing of the written*



*statement. As counterclaim is treated to be plaint, generally it needs to first of all be compliant with the limitation provided under the Limitation Act, 1963 as the time-barred suits cannot be entertained under the guise of the counterclaim just because of the fact that the cause of action arose as per the parameters of Order 8 Rule 6-A.*

**18.** *As discussed by us in the preceding paragraphs, the whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6-A in Order 8 CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filing of the counterclaim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and ultimately it leads to flagrant miscarriage of justice. At the same time, there cannot be a rigid and hyper-technical approach that the provision stipulates that the counterclaim has to be filed along with the written statement and beyond that, the court has no power. The courts, taking into consideration the reasons stated in support of the counterclaim, should adopt a balanced approach keeping in mind the object behind the amendment and to subserve the ends of justice. 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*



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*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. But however, we are of the considered opinion that the defendant cannot be permitted to file counterclaim after the issues are framed and after 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 CPC.*

**19.** *In this regard having clarified the law, we may note that Mahendra Kumar case [Mahendra Kumar v. State of M.P., (1987) 3 SCC 265] needs to be understood and restricted to the facts of that case. We may note that even if a counterclaim is filed within the limitation period, the trial court has to exercise its discretion to balance between the right to speedy trial and right to file counterclaim, so that the substantive justice is not defeated. The discretion vested with the trial court to ascertain the maintainability of the counterclaim is limited by various considerations based on facts and circumstances of each case. We may point out that there cannot be a straitjacket formula, rather there are numerous factors which needs to be taken into consideration before admitting a counterclaim.*

**20.** *We may note that any contrary interpretation would lead to unnecessary curtailment of the right of a defendant to file counterclaim. This Court needs to recognise the practical difficulties faced by the litigants across the country. Attaining the laudable goal of speedy justice itself*



*cannot be the only end, rather effective justice wherein adequate opportunity is provided to all the parties, need to be recognised as well (refer to Salem Advocate Bar Assn. case [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344 : AIR 2005 SC 3353] ).*

*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.*
- (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.*



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*(x) In any case, not after framing of the issues.*

*22. We answer the reference accordingly. The instant special leave petition may be placed before an appropriate Bench after obtaining orders from the Hon'ble Chief Justice of India, for considering the case on merits.*

*M.M. Shantanagoudar, J. (partly supplementing and partly dissenting)— I have read the opinion given in this reference by my learned Brothers. I agree with their conclusion that a court may exercise its discretion and permit the filing of a counterclaim after the written statement, till the stage of framing of the issues of the trial. However, in addition to this, I find that in exceptional circumstances, the subsequent filing of a counterclaim may be permitted till the stage of commencement of recording of the evidence on behalf of the plaintiff. I deem it fit to state the reasons for arriving at this conclusion through this opinion.*

*24. This reference arises out of the order of this Court dated 10-9-2018 in Ashok Kumar Kalra v. Surendra Agnihotri [Ashok Kumar Kalra v. Surendra Agnihotri, 2018 SCC OnLine SC 3497] , which states as follows: (SCC OnLine SC para 3)*

*“3. The papers to be placed before the Hon'ble Chief Justice of India for constitution of a three-Judge Bench to look into the effect of our previous judgments as well as whether the language of Order 8 Rule 6-A of the Code of Civil Procedure is mandatory in nature.”*

*25. Essentially, in light of the previous judgments of this Court, the question referred to this Court is whether it is*



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*mandatory for a counterclaim of the defendant to be filed along with the written statement.*

*26. The counsel for both parties argued about the scope of Order 8 Rule 6-A of the Code of Civil Procedure, 1908 (hereinafter “CPC”) and whether a counterclaim must necessarily be filed along with the written statement. Since the arguments have been elaborated upon by my learned Brother Judge, they are not reproduced herein for the sake of brevity.*

*27. To fully understand the expanse of the legal questions in this case, it is essential to appreciate the context in which the rules relating to counterclaims were introduced in the CPC. The originally enacted CPC of 1908 did not provide a statutory right to file a counterclaim. At that time, Order 8 only pertained to written statements and set-offs. Taking note of this omission, the Law Commission of India, in its 27th and 54th Reports, had recommended that express provisions on counterclaims should be included in CPC to avoid multiple proceedings and to dispel ambiguity on whether counterclaims could be entertained at all. These recommendations were implemented through the Code of Civil Procedure (Amendment) Act, 1976, which introduced the following rules to Order 8 CPC:*

**“6-A. Counterclaim by defendant.—**(1) A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counterclaim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant



*has delivered his defence or before the time limited for delivering his defence has expired, whether such counterclaim is in the nature of a claim for damages or not: Provided that such counterclaim shall not exceed the pecuniary limits of the jurisdiction of the court.*

*(2) Such counterclaim shall have the same effect as a cross-suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counterclaim.*

*(3) The plaintiff shall be at liberty to file a written statement in answer to the counterclaim of the defendant within such period as may be fixed by the court.*

*(4) The counterclaim shall be treated as a plaint and governed by the rules applicable to plaints.*

**6-B. Counterclaim to be stated.**—Where any defendant seeks to rely upon any ground as supporting a right of counterclaim, he shall, in his written statement, state specifically that he does so by way of counterclaim.

**6-C. Exclusion of counterclaim.**—Where a defendant sets up a counterclaim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counterclaim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counterclaim, apply to the court for an order that such counterclaim may be excluded, and the court may, on the hearing of such application make such order as it thinks fit.

**6-D. Effect of discontinuance of suit.**—If in any case in which the defendant sets up a counterclaim, the suit



*of the plaintiff is stayed, discontinued or dismissed, the counterclaim may nevertheless be proceeded with.*

**6-E. Default of plaintiff to reply to counterclaim.**—*If the plaintiff makes default in putting in a reply to the counterclaim made by the defendant, the court may pronounce judgment against the plaintiff in relation to the counterclaim made against him, or make such order in relation to the counterclaim as it thinks fit.*

**6-F. Relief to defendant where counterclaim succeeds.**—*Where in any suit a set-off or counterclaim is established as a defence against the plaintiff's claim, and any balance is found due to the plaintiff or the defendant, as the case may be, the court may give judgment to the party entitled to such balance.*

**6-G. Rules relating to written statement to apply.**—*The rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counterclaim."*

**28.** *For the first time, through the introduction of Rules 6-A to 6-G of Order 8, an explicit right of filing a counterclaim was accorded to the defendant, and rules governing the same were laid down. In this scheme, Rule 6-A(1) is the cornerstone provision. It specifically grants the right of filing a counterclaim. In addition to this, it also places a categorical limitation on the accrual of the cause of action for a counterclaim. This is in the form of the requirement that the cause of action pertaining to the counterclaim must arise either before or after the filing of the suit, but before the defendant has delivered his defence (i.e. before the filing of*



*the written statement), or before the expiry of the time period for delivering such defence.*

*29. Further, under Rule 6-A(2), a counterclaim is stated to have the same effect as the plaint in a cross-suit, so as to enable the court to pronounce a final judgment on the original claim as well as the counterclaim in the same suit itself. Thus, it is evident that Rule 6-A has been carefully designed to meet the purpose of avoiding multiplicity of proceedings.*

*30. It is clear that Rule 6-A(1) only places a limitation on the time within which the cause of action for a counterclaim must arise. Besides this limitation, there is no explicit guidance in Rule 6-A(1) as to the time within which the counterclaim itself must be filed. In this respect, Rule 6-A(4) provides that a counterclaim is governed by the rules applicable to plaints. It is well established that a plaint must be presented within the period prescribed under the Limitation Act, 1963 (hereinafter "the Limitation Act"). For counterclaims as well, the period within which they must be filed can be inferred from Section 3(2)(b)(ii) of the Limitation Act, 1963, which states thus:*

***“3. (2) For the purposes of this Act—***

*(b) any claim by way of a set-off or a counterclaim, shall be treated as a separate suit and shall be deemed to have been instituted—*

*(ii) in the case of a counterclaim, on the date on which the counterclaim is made in court;”*

*This provision mandates that in order to determine the limitation period applicable to a counterclaim, it must be*



*treated as a separate suit, which is deemed to have been instituted on the date on which it is made in the court. Thus, evidently, in consonance with the provisions of Order 8 Rule 6-A(4), the Limitation Act also treats a counterclaim like a plaint. This means that much like a plaint, the limitation for filing a counterclaim also depends on the nature of the claim and is accordingly governed by the period of limitation stipulated in the Limitation Act.*

***31.** From the foregoing discussion, it is clear that a counterclaim can be filed if two conditions are met: first, its cause of action complies with Order 8 Rule 6-A(1); and second, it is filed within the period specified under the Limitation Act. Clearly, by itself, Rule 6-A does not specifically require that a counterclaim has to be filed along with the written statement. In the absence of a particular mandate under this Rule, it is necessary to look to other provisions of CPC to determine whether a counterclaim can be filed after a written statement.*

***32.** It would be appropriate to begin with a reference to Order 8 Rule 9, which states thus:*

***“9. Subsequent pleadings.—**No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counterclaim 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 and fix a time of not more than thirty days for presenting the same.”*



*According to this Rule, after the filing of the written statement, it is open to plead a defence to a set-off or counterclaim without the leave of the court. However, any other pleading sought to be filed after the written statement requires the leave of the court. The Rule also vests the court with a discretion to allow filing of a written statement or additional written statement within a period not exceeding thirty days.*

**33.** *A plain reading of Order 8 Rule 9 makes it clear that the court has the discretion to allow any subsequent pleading upon such terms as it thinks fit. It is important to appreciate here that such subsequent pleading or additional written statement may include a counterclaim. This is because Rule 9 does not create a bar on the nature of claims that can be raised as subsequent pleadings. As long as the court considers that it would be proper to allow a counterclaim by way of a subsequent pleading, it is possible to file a counterclaim after filing the written statement.*

**34.** *In addition to this, it is also possible to introduce a belated counterclaim by way of an amendment to the original written statement under Order 6 Rule 17 CPC. However, as is the case with Order 8 Rule 9, the filing of such a counterclaim through an amended written statement is subject to the leave of the*

**35.** *In this regard, it would be relevant to note the observations of this Court in Ramesh Chand Ardawatiya v. Anil Panjwani [Ramesh Chand Ardawatiya v. Anil Panjwani, (2003) 7 SCC 350] : (SCC p. 367, para 28)*



*“28. Looking to the scheme of Order 8 as amended by Act 104 of 1976, we are of the opinion, that there are three modes of pleading or setting up a counterclaim in a civil suit. Firstly, the written statement filed under Rule 1 may itself contain a counterclaim which in the light of Rule 1 read with Rule 6-A would be a counterclaim against the claim of the plaintiff preferred in exercise of legal right conferred by Rule 6-A. Secondly, a counterclaim may be preferred by way of amendment incorporated subject to the leave of the court in a written statement already filed. Thirdly, a counterclaim may be filed by way of a subsequent pleading under Rule 9. In the latter two cases the counterclaim though referable to Rule 6-A cannot be brought on record as of right but shall be governed by the discretion vesting in the court, either under Order 6 Rule 17 CPC if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the court under Order 8 Rule 9 CPC if sought to be placed on record by way of subsequent pleading.”*

*I fully agree with this proposition, and affirm on the basis of the foregoing discussion that the court has the discretion to allow a counterclaim to be filed after the written statement in exercise of its power under Order 8 Rule 9 and Order 6 Rule 17 CPC.*

**36.** *It can also be gleaned from Order 8 Rule 10 that it is permissible to file a belated counterclaim under the scheme of Order 8 CPC:*

**“10. Procedure when party fails to present written statement called for by court.—***Where any party from whom a written statement is required under Rule 1 or Rule 9*



*fails to present the same within the time permitted or fixed by the court, as the case may be, the court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.”*

*Under this Rule, the court is afforded with the discretion to pass any order that it deems fit in the event that a written statement is not filed within the prescribed statutory limit. To determine whether this discretion extends to allowing the filing of a belated counterclaim as well, it would be useful to appreciate the scope of the discretion accorded under this provision.*

**37.** *In Salem Advocate Bar Assn. (2) v. Union of India [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344 : AIR 2005 SC 3353] , this Court, while construing the nature of Order 8 Rule 1, relied on the broad discretionary power under Order 8 Rule 10, and observed as follows: (SCC p. 364, para 21)*

*“21. In construing this provision, support can also be had from Order 8 Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the court, the court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. ... In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 Order 8, the court in its discretion would have the power to allow the defendant to file written statement even after*



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*expiry of the period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to 'make such order in relation to the suit as it thinks fit'. Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory."*

*Thus, under Order 8 Rule 10, the court has the power to condone the delay in filing of a written statement, if it deems it fit in the facts and circumstances of the case. If it is so, there is no reason as to why the delay in filing a counterclaim cannot be condoned by the court as well.*

**38.** *A conjoint and harmonious reading of Rules 6-A, 9 and 10 of Order 8 as well as Order 6 Rule 17 CPC thus reveals that the court is vested with the discretion to allow the filing of a counterclaim even after the filing of the written statement, as long as the same is within the limitation prescribed under the Limitation Act, 1963. In this regard, I agree with the propositions laid down in the decisions discussed below.*

**39.** *In Mahendra Kumar v. State of M.P. [Mahendra Kumar v. State of M.P., (1987) 3 SCC 265] , it was held that: (SCC pp. 272-73, para 15)*

*"15. The next point that remains to be considered is whether Rule 6-A(1) of Order 8 of the Code of Civil Procedure bars the filing of a counterclaim after the filing of a written statement. This point need not detain us long, for Rule 6-A(1) does not, on the face of it, bar the filing of a counterclaim by the defendant after he had filed the written statement. What*



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*is laid down under Rule 6-A(1) is that a counterclaim can be filed, provided the cause of action had accrued to the defendant before the defendant had delivered his defence or before the time limited for delivering his defence has expired, whether such counterclaim is in the nature of a claim for damages or not. The High Court, in our opinion, has misread and misunderstood the provision of Rule 6-A(1) in holding that as the appellants had filed the counterclaim after the filing of the written statement, the counterclaim was not maintainable. ... Under Article 113 of the Limitation Act, 1963, the period of limitation of three years from the date the right to sue accrues, has been provided for any suit for which no period of limitation is provided elsewhere in the Schedule. It is not disputed that a counterclaim, which is treated as a suit under Section 3(2)(b) of the Limitation Act has been filed by the appellants within three years from the date of accrual to them of the right to sue.”*

**40.** *In Shanti Rani Das Dewanjee v. Dinesh Chandra Day [Shanti Rani Das Dewanjee v. Dinesh Chandra Day, (1997) 8 SCC 174] , it was held that the right to file a counterclaim is referable to the date of accrual of the cause of action: (SCC p. 175, para 2)*

*“2. In our view, the impugned decision does not warrant interference. Such question was specifically raised before this Court in Mahendra Kumar v. State of M.P. [Mahendra Kumar v. State of M.P., (1987) 3 SCC 265] It has been held by this Court that right to file a counterclaim under Order 8 Rule 6-A of the Code of Civil Procedure is referable to the date of accrual of the cause of action. If the cause of action*



*had arisen before or after the filing of the suit, and such cause of action continued up to the date of filing written statement or extended date of filing written statement, such counterclaim can be filed even after filing the written statement. The said Civil Case No. 248 of 1982, in which the application under Order 8 Rule 6-A has been filed by the defendant-respondents was instituted on 15-7-1982 and the application under Order 8 Rule 6-A was presented on 22-6-1985. It cannot be held that the cause of action for the suit or counterclaim was ex facie barred by limitation under the Limitation Act.”*

**41.** *I am unable to persuade myself to arrive at a different conclusion than the one found in the aforementioned judgments.*

**42.** *It was argued by the counsel for the respondent that Order 8 Rule 6-A(1) requires that the cause of action for a counterclaim should arise before the filing of the written statement, and hence it is logical that the counterclaim, or the grounds upon which it is based, should also find a mention in the written statement. To support this, he relied on Order 8 Rule 6-B, which states that a defendant seeking to rely upon any ground in support of his right of counterclaim, shall specifically state in his written statement that he does so by way of a counterclaim.*

**43.** *I do not agree with this view for two reasons:*

**43.1.** *First, it is possible that at the time of filing the written statement, the defendant is unaware of the facts giving rise to the cause of action for his counterclaim. For instance, in a suit for declaration of title brought by the*



*plaintiff against his sister, the defendant may be unaware that the plaintiff has wrongfully detained her belongings kept at the said property, at the time of filing her written statement. In such a situation, even though the cause of action for her counterclaim of wrongful detention of belongings may have arisen before the filing of the written statement, it may not have been possible for her to raise the said counterclaim. Similarly, limited access to justice, especially in rural areas, shaped by the socio-economic context of parties, may compel the filing of belated counterclaims.*

***43.2.**Second, a perusal of Order 8 Rule 6-B suggests that it is only limited to cases where the counterclaim is made along with the written statement. In instances where a belated counterclaim is raised by way of an amendment to the written statement, or as a subsequent pleading, Rule 6-B cannot be said to be applicable. This is because in any such case, if the court relies on a technical interpretation of Rule 6-B to disallow the filing of a belated counterclaim, the defendant would still be free to file a fresh suit for such a claim. He may, in such matters, after filing the separate suit, request the court to club the suits or to hear them simultaneously. This may further delay the process of adjudication and would certainly not help the plaintiff in the first suit, who may have opposed the filing of the belated counterclaim. Such multiplicity of proceedings goes against the object with which Rules 6-A to 6-G were introduced to CPC. Thus, the provisions under Order 8 should not be read in isolation, but in a conjoint and harmonious manner, and*



*Rule 6-B cannot be read as a limitation on the court's discretion to permit the filing of a belated counterclaim.*

*44. Therefore, I do not find force in the argument raised by the counsel for the respondent.*

*45. Further, the contention that the limitation on filing of set-offs under Order 8 Rule 6 should be read into Rule 6-A(1) is untenable. The nature of a set-off and a counterclaim is different. For instance, a set-off must necessarily be of the same nature as the claim of the plaintiff and arise out of the same transaction. These requirements do not hold for counterclaims, which may be related to "any right or claim in respect of a cause of action accruing to the defendant against the plaintiff" as stated in Order 8 Rule 6-A(1). Further, in case of set-offs, there is no provision akin to Order 8 Rule 6-A(4), which provides that a set-off must be treated as a plaint. Thus, it appears that the legislature has consciously considered it fit to omit a specific time-limit for filing of counterclaims in Rule 6-A. In such a scenario, a limitation cannot be read into this Rule.*

*46. Lastly, as regards the respondent's reliance on Order 8 Rule 1-A, which requires the documents in support of a counterclaim to be presented along with the written statement itself, I am of the view that this requirement should not be read as being mandatory. Rule 1-A(2) itself provides instances where such documents are not in the possession of the defendant, by requiring him to specify the person in whose possession the documents rest. Accordingly, Rule 1-A(3) (as amended in 2002) also provides that these documents may be produced later, with the leave of the*



*court. The discretion accorded in these provisions goes on to support the conclusion that it is possible to file a counterclaim even after the written statement, with the leave of the court.*

*47. Finally, then, the scope of discretion vested with the court under Order 6 Rule 17 and Order 8 Rule 9 to allow for belated counterclaims remains to be examined. It must be determined when it may be proper for the court to refuse a belated counterclaim, in spite of it being permissible within the scheme of Order 8 Rule 6-A and the Limitation Act, 1963.*

*48. In several cases, it is possible that the period of limitation for filing of counterclaims may extend up to a long period of time and prolong the trial. For instance, in a suit for declaration of title, the defendant may bring a counterclaim for possession of the immovable property based on previous possession. In terms of Order 8 Rule 6-A, such a claim would be admissible as long as the dispossession had occurred before the filing of the written statement, or before the expiry of the time provided for filing of the written statement. However, as per the Limitation Act, such a claim would be valid even if it were brought within twelve years from the date of the defendant's dispossession.*

*49. In such a situation, it is possible that by the time the counterclaim is brought, the issues in the original suit have already been framed, the evidence led, arguments made, and the judgment reserved. Allowing a counterclaim to be filed at this stage would effectively result in a re-trial of the suit, since the court would have to frame new issues, both parties would have to lead evidence, and only then*



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*would the judgment be pronounced. If this is permitted, the very purpose of allowing counterclaims i.e. avoiding multiplicity of litigation, would be frustrated.*

**50.** *It is well settled that procedural rules should not be interpreted so as to defeat justice, rather than furthering it. This is because procedural law is not meant to serve as a tyrant against justice, but to act as a lubricant in its administration. Thus, when courts set out to do justice, they should not lose sight of the end goal amidst technicalities. In some cases, this means that rules that have traditionally been treated as mandatory, may be moulded so that their object and substantive justice is not obstructed. It would be apposite to remember that equity and justice should be the foremost considerations while construing procedural rules, without nullifying the object of the legislature in totality. Thus, rules under the Limitation Act which may allow for filing of a belated counterclaim up to a long period of time, should not be used to defeat the ends of justice.*

**51.** *Keeping this in mind, in Ramesh Chand Ardawatiya [Ramesh Chand Ardawatiya v. Anil Panjwani, (2003) 7 SCC 350] , this Court considered the scope of discretion in allowing for belated counterclaims. It is useful to refer to the observations made by the Court in the context of Order 8 Rule 6-A (as it was in 1976): (SCC pp. 367-68, para 28)*

*“28. ... The purpose of the provision enabling filing of a counterclaim is to avoid multiplicity of judicial proceedings and save upon the court's time as also to exclude the inconvenience to the parties by enabling claims and*



*counterclaims, that is, all disputes between the same parties being decided in the course of the same proceedings. If the consequence of permitting a counterclaim either by way of amendment or by way of subsequent pleading would be prolonging of the trial, complicating the otherwise smooth flow of proceedings or causing a delay in the progress of the suit by forcing a retreat on the steps already taken by the court, the court would be justified in exercising its discretion not in favour of permitting a belated counterclaim. The framers of the law never intended the pleading by way of counterclaim being utilised as an instrument for forcing upon a reopening of the trial or pushing back the progress of proceeding. Generally speaking, a counterclaim not contained in the original written statement may be refused to be taken on record if the issues have already been framed and the case set down for trial, and more so when the trial has already commenced. ... A refusal on the part of the court to entertain a belated counterclaim may not prejudice the defendant because in spite of the counterclaim having been refused to be entertained he is always at liberty to file his own suit based on the cause of action for counterclaim.”*

*To ensure that the objective of introducing the statutory amendments with respect to counterclaims was not defeated, it was rightly held that a belated counterclaim raised by way of an amendment to the written statement (under Order 6 Rule 17) or as a subsequent pleading (under Order 8 Rule 9) should not be allowed after the framing of issues and commencement of trial.*



*52. Later, in Rohit Singh v. State of Bihar [Rohit Singh v. State of Bihar, (2006) 12 SCC 734] , this Court read in a similar limitation on the filing of belated counterclaims: (SCC p. 743, para 18)*

*“18. ... A counterclaim, no doubt, could be filed even after the written statement is filed, but that does not mean that a counterclaim can be raised after issues are framed and the evidence is closed. Therefore, the entertaining of the so-called counterclaim of Defendants 3 to 17 by the trial court, after the framing of issues for trial, was clearly illegal and without jurisdiction. On that short ground, the so-called counterclaim, filed by Defendants 3 to 17 has to be held to be not maintainable.”*

*It is crucial to note that even though the Court held that a counterclaim can be filed after the filing of a written statement, it must necessarily be filed before the issues are framed and the evidence is closed. In fact, since the counterclaim in the said matter was filed at the stage where the judgment was reserved [Rohit Singh v. State of Bihar, 2006 SCC OnLine SC 29] , the Court went as far as saying that entertaining such a claim was illegal and without jurisdiction.*

*53. The decision of this Court in Bollepanda P. Poonacha v. K.M. Madapa [Bollepanda P. Poonacha v. K.M. Madapa, (2008) 13 SCC 179] , is also significant in this regard. Referring to Ramesh Chand Ardawatiya [Ramesh Chand Ardawatiya v. Anil Panjwani, (2003) 7 SCC 350] , it acknowledged that belated counterclaims were to be discouraged, and called upon the Court to consider*



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*questions of serious injustice and irreparable loss while permitting any such claim. However, in Bollepanda [Bollepanda P. Poonacha v. K.M. Madapa, (2008) 13 SCC 179] , the Court did not have an occasion to expound further on this proposition, as the counterclaim had been rejected on the basis that its cause of action had arisen after the filing of the written statement.*

*54. It was in Gayathri Women's Welfare Assn. v. Gowramma [Gayathri Women's Welfare Assn. v. Gowramma, (2011) 2 SCC 330 : (2011) 1 SCC (Civ) 429] , that this Court once again had the occasion to look into the filing of a belated counterclaim. In this case, filing of the initial counterclaim was not in challenge. Instead, the Court was considering the effect of an amendment to an existing counterclaim. While the trial court had refused to allow such an amendment, the High Court had granted [Gowramma v. Gayathri Women's Welfare Assn., 2008 SCC OnLine Kar 786] the same. Reiterating the concerns noted in Ramesh Chand Ardawatiya [Ramesh Chand Ardawatiya v. Anil Panjwani, (2003) 7 SCC 350] , this Court held as follows: (Gowramma case [Gayathri Women's Welfare Assn. v. Gowramma, (2011) 2 SCC 330 : (2011) 1 SCC (Civ) 429] , SCC p. 343, para 44)*

*"44. The matter herein symbolises the concern highlighted by this Court in Ramesh Chand [Ramesh Chand Ardawatiya v. Anil Panjwani, (2003) 7 SCC 350] . Permitting a counterclaim at this stage would be to reopen a decree which has been granted in favour of the appellants by the trial court. The respondents have failed to establish any*



*factual or legal basis for modification/nullifying the decree of the trial court.”*

*The Court also relied on Rohit Singh [Rohit Singh v. State of Bihar, (2006) 12 SCC 734] and observed that a counterclaim cannot be filed after the framing of issues.*

*55. In Vijay Prakash Jarath v. Tej Prakash Jarath [Vijay Prakash Jarath v. Tej Prakash Jarath, (2016) 11 SCC 800 : (2016) 4 SCC (Civ) 505] , this Court further refined the limitation in Rohit Singh [Rohit Singh v. State of Bihar, (2006) 12 SCC 734] that counterclaims cannot be raised after the issues are framed and the evidence is closed. In the said case, even though the issues had been framed, and the case was in the early stages of recording of the plaintiff's evidence, a counterclaim filed at that point was allowed, as no prejudice was caused to the plaintiff.*

*56. The above discussion lends support to the conclusion that even though Rule 6-A permits the filing of a counterclaim after the written statement, the court has the discretion to refuse such filing if it is done at a highly belated stage. However, in my considered opinion, to ensure speedy disposal of suits, propriety requires that such discretion should only be exercised till the framing of issues for trial. Allowing counterclaims beyond this stage would not only prolong the trial, but also prejudice the rights that may get vested with the plaintiff over the course of time.*

*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 counterclaim even after the framing of issues, so long as the court has not started*



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*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 counterclaim 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.*

***58.** At this juncture, I would like to address the observation in Rohit Singh [Rohit Singh v. State of Bihar, (2006) 12 SCC 734] that a counterclaim, if filed after the framing of the issues and closing of the evidence, would be illegal and without jurisdiction. In my opinion, this is not a correct statement of law, as the filing of counterclaims after the commencement of recording of evidence is not illegal per se. However, I hasten to add that permitting such a counterclaim would be improper, as the court's discretion has to be exercised wisely and pragmatically.*

***59.** There are several considerations that must be borne in mind while allowing the filing of a belated counterclaim:*

***59.1.**First, the court must consider that no injustice or irreparable loss is being caused to the defendant due to a refusal to entertain the counterclaim, or to the plaintiff by allowing the same. Of course, as the defendant would have the option to pursue his cause of action in a separate suit, the question of prejudice to the defendant would ordinarily not arise.*



*59.2. Second, the interest of justice must be given utmost importance and procedure should not outweigh substantive justice.*

*59.3. Third, the specific objectives of reducing multiplicity of litigation and ensuring speedy trials underlying the provisions for counterclaims, must be accorded due consideration.*

*60. Having considered the previous judgments of this Court on counterclaims, the language employed in the rules related thereto, as well as the intention of the legislature, I conclude that it is not mandatory for a counterclaim to be filed along with the written statement. The court, in its discretion, may allow a counterclaim to be filed after the filing of the written statement, in view of the considerations mentioned in the preceding paragraph. 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 this extent, I concur with the conclusion reached by my learned Brothers. However, for the reasons stated above, I am of the view that in exceptional circumstances, a counterclaim 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.*

*61. The reference is answered accordingly."*

5. As stated supra, in the light of the undisputed fact that the counter claim sought to be put forth by the petitioner was after commencement of plaintiff's evidence, in the light of the judgment



of the Apex Court in ***Ashok Kumar Karla's case supra***, the outer limit for filing a counter claim had undisputedly stood expired on the date, on which the petitioner filed the instant application, I do not find any illegality or infirmity warranting interference by this Court exercise of its jurisdiction under Article 227 of the Constitution of India as held by the Apex Court in the cases of ***Radhey Shyam Vs. Chhabi Nath - (2015) 5 SCC 423, K.P. Natarajan Vs. Muthalammal – AIR 2021 SC 3443 and Mohamed Ali Vs. V. Jaya & others – (2022) 10 SCC 477.***

6. Accordingly, there is no merit in the petition and the same is hereby dismissed. However, liberty is reserved in favour of the petitioner to take to recourse to such remedies as available in law including filing a fresh suit, subject to all just exceptions and limitation.

Sd/-  
(S.R.KRISHNA KUMAR)  
JUDGE

Srl.