

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. 1280 of 2023

**Kolkata Metropolitan Development Authority
Vs.
BBT Elevated Road Pvt. Ltd. & Ors.**

For the Petitioner : *Mr. Ashok Banerjee,*
Mr. Probal Mukherjee,
Mr. Avishek Guha,
Mr. Sirsanya Bandopadhyay,
Ms. Akansha Chopra.

For the Opposite Party No.1 : *Mr. Abhrajit Mitra,*
Mr. Satadeep Bhattacharyya,
Mr. Sanjeev Kr. Trivedi,
Ms. Iran Hassan,
Mr. Sanket Sarangi.

Hearing concluded on: 31.07.2023
Judgment on: 17.10.2023

Shampa Sarkar, J.:-

1. This revisional application arises out of an order dated September 15 of 2022 passed by the learned Judge, Commercial Court at Alipore in I.A. No.07 of 2022 filed in connection with Money Suit No.08 of 2020.
2. By the order impugned, the learned Trial Judge rejected the application being I.A. No.07 of 2022 filed by the defendant/petitioner and refused to accept the counter-claim. By an application dated July 13, 2022, the defendant No.1/KMDA prayed for acceptance of the counter-claim upon direction of payment of *ad valorem* court fees, if required. The counter-claim was valued at Rs.72.211 crores. The grounds for rejection were that the suit

had progressed and was at the stage of evidence. No exceptional circumstances could be established by the defendant No.1/petitioner for acceptance of the counter-claim at such a belated stage. In a commercial suit, the timeline prescribed should be strictly adhered to. The sole purpose behind promulgation of the Commercial Court's Act, 2015, was speedy determination of commercial disputes in order to reduce the pendency of cases and to prepare grounds to attract capital investments in the country with the object to promote ease of doing business.

3. Challenging the order impugned, FMA 1379 of 2022 was filed in the Commercial Appellate Division of the High Court. The Hon'ble Division Bench dismissed the appeal on the ground that the order was not covered by the provisions of Order 43 of the Code of Civil Procedure. The Hon'ble Division Bench reserved the right of the petitioner to pursue its remedy, in accordance with law. Accordingly, the revisional application was filed. In the revisional application, the order of the learned trial judge was assailed on the following grounds:-

- (a) Delay, if any, in filing the counter-claim ought to have been condoned, as the suit was proceeding during the Covid-19 pandemic. The orders of the Hon'ble Apex Court and the High Court, extending the period of limitation in filing suits and proceedings should have been applied.
- (b) As the legislature had consciously omitted prescribing any period of limitation in filing counter-claims in respect of commercial suits although the Code of Civil Procedure was amended thereby fixing a

time limit for filing written statements, the counter-claim should have been accepted by the learned court, even at a belated stage.

- (c) The learned Judge failed to take into consideration that the period between March 15, 2020 to February 28, 2022 was excluded while calculating the period of delay. The judgment of the Hon'ble Apex Court in Suo Motu Writ Petition (Civil) No.3 of 2020 was not taken into consideration. Such period ought not to have been considered as time lost or wasted by the petitioner in filing the counter-claim under Order 8 Rule 6A of the Code of Civil Procedure.
- (d) The counter-claim was sought to be filed after the framing of issues, but before completion of the evidence. When the learned trial court had granted extension to the learned Advocate Commissioner, for completion of the work of recording evidence of witnesses of both parties, the counter-claim should have been accepted as the witness action was not complete.
- (e) The learned Judge, did not take into consideration the fact that the issues had not been finalized as the application filed by the opposite party No.1 for deletion of some of the issues, was pending.
- (f) An application for amendment of the plaint was also pending.

4. The facts in a nutshell, are that on October 16, 2020, the commercial suit was registered as Money Suit No.08 of 2020. The suit was filed against the petitioner by the opposite party No.1. The written statement was filed by the petitioner on January 18, 2021. In paragraphs 9 and 12 of the written

statement, the petitioner reserved the right to claim damages by filing a counter-claim. An interlocutory application, I.A. No.02 of 2021 was filed seeking acceptance of the written statement. By an order dated December 16, 2021, I.A. No.02 of 2021 was allowed and the written statement was accepted. On April 21, 2022, the learned Court framed issues and appointed an Advocate Commissioner to record evidence of the witnesses of the parties. On June 4, 2022, I.A. No.04 of 2022 was filed by the opposite party/plaintiff seeking amendment of the issues, by striking out some of them. On June 9, 2022 the opposite party/plaintiff filed I.A. No.5 of 2022 seeking amendment of the plaint. On July 6, 2022, the opposite party/plaintiff filed an application under Order 7 Rule 14 and Order 11 Rule 1 (5), which was registered as I.A. No. 6 of 2022. On July 13, 2022, the defendant No.1/petitioner filed I.A. No.07 of 2022 seeking leave to file the belated counter-claim valued at Rs.72.211 crores. On September 15, 2022, the said application was rejected and the counter-claim was not accepted. By order dated January 25, 2023, the learned Trial Court granted extension of time to the learned Advocate Commissioner for completion of the commission work.

5. Mr. Ashok Kumar Banerjee, learned Senior Advocate appearing on behalf of the petitioner submitted that substantial foundation with regard to claim for damages by way of a counter-claim was laid in the written statement filed on January 18, 2021. The petitioner reserved the right to file the counter-claim. By order dated December 16, 2021, the learned Court accepted the written statement. The causes shown by the defendant

No.1/petitioner for the delay which occurred in filing the written statement were found sufficient. Accordingly, the application for acceptance of the written statement filed beyond 30 days was disposed of by the learned Court below and January 17, 2022 was fixed for the case management hearing.

6. Mr. Banerjee urged that acceptance of the written statement would amount to an order allowing the petitioner to file a counter-claim at any stage of the proceeding, after the written statement had been filed. Being influenced by the idea of expeditious disposal of a commercial suit, the learned trial court neglected to render substantial justice. The plaintiff would not be prejudiced in any way if the counter-claim was accepted even though the same had been filed after 1.5 years from filing of the written statement. The learned Court did not take into consideration the exceptional situation, which had caused the delay. Facts were not discussed in the order impugned. Applications for amendment of the plaint, and deletion of issues etc. were pending. Pendency of such application would indicate that the suit had not substantially progressed. The witness action was not complete.

7. Learned senior Advocate urged that reliance on the decision of the Hon'ble Apex Court in the matter of ***State of Rajasthan vs. Ganesh Lal*** reported in ***AIR 2008 SC 690***, by the learned trial judge, was erroneous. It was not a general rule that in all cases counter-claim should be filed before framing of issues. Unfortunately, the learned judge failed to discuss the background of the present case. A discretion should have been exercised upon taking into consideration the special circumstances. Whether the ratio of the decision of the Hon'ble Apex Court fitted into the facts of the case in

hand, was not discussed in the order impugned. Referring to an observation of Lord Denning, learned advocate urged that one additional or different fact could make a world of difference in the conclusion arrived at in two cases. Disposal of cases, by blindly placing reliance on a decision of a superior court, was impermissible in law. Each case depended on its own facts and a close similarity between one case and another was not enough. A single significant detail would alter the entire perspective in deciding a case. There must be room for circumstantial flexibility. A Court should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case would fall, a broad resemblance to another case would not at all be decisive.

8. Thus, learned advocate submitted that the facts of the present case ought to have been considered by the learned trial judge, especially the allegation in the counter-claim that in order to defraud a statutory authority, which was state under Article 12 of the Constitution of India, the petitioner rescinded and withdrew from the contract, thereby causing huge burden on the public exchequer. KMDA had to engage another contractor to complete the work which was a public project. Almost 100 crores was additionally spent from the coffers of the petitioner to ensure due completion of the project

9. Reliance was placed on paragraph 15 of the judgment passed in the matter of ***Harendra Nath Burman vs. Sm. Suprova Burman and anr.*** reported in ***AIR 1989 Cal 120***. Learned Advocate submitted that if confronted with conflicting decisions of the Hon'ble Apex Court rendered by

Benches of equal strength, and the High Court was required to prefer one to the other, the court must follow the one, which according to it, was better on the point of law. Thus, the decision in which it had been held that even at the stage of evidence, a counter-claim could be accepted in exceptional cases, ought to have been followed in the facts of the present case. The learned trial judge mechanically applied the decisions of the Hon'ble Apex Court, without addressing the special facts and circumstances in the present case. Reliance was also placed on a decision of this Court in the matter of **Sk. Maison & ors. vs. The State of West Bengal & ors.** reported in **(2009) 1 Cal LJ 33**, Further reliance was placed on the decision of **Mahesh Govindji Trivedi vs. Bakul Maganlal Byas and ors.** reported in **2022 SCC OnLine SC 1390**, to substantiate that rules or procedure were intended to sub serve justice, rather than to punish the parties in conduct of their case. The counter-claim could not have been removed from consideration of the learned Court merely because it was presented after some time from filing of the written statement. The learned Trial Judge ought to have taken into account that acceptance of the counter-claim would prevent multiplicity of proceedings, the decision in **Ashok Kumar Kalra vs Wing CDR. Surendra Agnihotri** reported in **(2020) 2 SCC 394**, would not operate as a bar in the present case.

10. Mr. Abhrajit Mitra, learned Senior Advocate supported the order impugned and submitted that no explanation for the delay in filing the counter-claim had been provided in the application. That issues could be framed at any stage and even before the delivery of judgment. Amendment of

the issues would not, in any way, set the clock back for the trial which was in progress. The case management hearing was held on February 14, 2022. Issues were framed on April 21, 2022. On the same day, the last case management hearing was held. An advocate Commissioner was appointed for recording evidence. On June 9, 2022, witness action commenced. On July 13, 2022, after one and half months from the commencement of evidence, the counter-claim was filed without showing sufficient caused for the delay in filing the same. The examination-in-chief was virtually over. In a commercial suit, parties were required to be more diligent and prompt in filing their pleadings. The period of limitation in filing a counter-claim, even if not prescribed by law, could not be extended beyond what was permitted by judicial decisions in case of normal suits, i.e., before issues were framed.

11. Learned Advocate relied on the decision of ***Vijay Prakash Jarath vs. Tej Prakash Jarath*** reported in ***(2016) 11 SCC 800***. Learned Advocate urged that filing of belated counter-claims had been discouraged by the Hon'ble Apex Court. A counter-claim could not be filed after issues had been framed and the evidence of PW was near completion. Further reliance was placed in the decision of ***Ashok Kumar Kalra (Supra)***, in support of his contention that it was within the discretion of the learned trial judge to refuse a highly belated counter-claim. The discretion to accept a belated counter-claim could only be exercised upto the stage of framing of issues. Allowing a counter-claim beyond such stage would not only prolong the trial, but also prejudice the rights that may have accrued in favour of the plaintiff over a course of time. Only in very exceptional circumstances, in

order to prevent multiplicity of proceedings and a situation of effective retrial, the Court could entertain a counter-claim after framing of issues so long as the Court had not started recording the evidence.

12. Considered the submissions of learned Senior Advocates for the respective parties. The principle laid down by the judicial decisions is that counter-claims should be filed before issues are framed. In very exceptional situations, counter-claim can be filed after issues have been framed, but before evidence is recorded. The Courts may exercise discretion by accepting belated counter-claims in order to avoid multiplicity of proceedings and a situation of effective retrial. Such relaxation has been given on the logic that between framing of issues and recording of evidence, suits do not progress much. The object of incorporation of Order 8 Rule 6A of the Code of Civil Procedure, by the amendment Act of 1976, is to avoid multiplicity of proceeding. Time limit for filing a counter-claim has not been explicitly provided by the legislature. Rather, limitation as to the accrual of the cause of action has been provided is Order 8 Rule 6A of the Code of Civil Procedure. This does not mean that the counter-claim can be filed at any time after filing of the written statement. A counter-claim is in the nature of a plaint. Generally, it needs to comply with the limitation provided under the Limitation Act, 1963. A time barred claim cannot be entertained under the guise of a counter-claim. However, as a general rule, a defendant cannot be permitted to file a counter-claim after the issues are framed and after the suit had proceeded substantially, even in cases when the claim may not be time barred. If any belated counter-claim, without any explanation for the

delay is accepted, it will defeat the cause of justice and be counter-productive to the objects and reasons for promulgation of the Commercial Courts Act, 2015.

13. Discretion is vested in the learned trial court whether to accept a belated counter-claim and also ascertain the maintainability of such counter-claim. Such discretion is limited by various considerations based on evaluation of facts and circumstances of each case. There cannot be a straitjacket formula. Rather, there are numerous factors which have to be seen and taken into account, before accepting a belated counter-claim. Some of such factors have been illustrated in paragraph 21 of the decision in ***Ashok Kumar Kalra (supra)***, namely, (i) period of delay, (ii) prescribed limitation period for the cause of action pleaded, (iii) reason for the delay, (iv) defendant's assertion of his right, (v) similarity of cause of action between the main suit and the counter-claim, (vi) cost of fresh litigation, (vii) injustice and abuse of process, (viii) prejudice to the opposite party, (ix) facts and circumstances of each case. Even in the dissenting view by His Lordship Mohan M. Shantanagoudar, it was held that in very exceptional circumstances and to prevent multiplicity of proceeding, the Court could entertain a counter-claim after framing of issues, so long as the Court had not started recording the evidence. If a counter-claim was brought during such period, a new issue could be framed by the Court if needed and evidence could be recorded, without seriously prejudicing the right of either party to the suit. His Lordship laid down several factors to be considered

and borne in mind, while allowing filing of a belated counter-claim. The relevant portion is quoted below:-

“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.”

14. Having discussed the principles of law prevailing and judicially laid down, this Court proceeds to deal with the order impugned. The application being I.A. No.07 of 2022, filed by the petitioner for acceptance of the counter-claim is quoted below:-

“1. That the Defendant No.1 has filed his counter claim against the plaintiffs as in the suit under reference.

2. That the defendant No.1 has filed the counter claim against the plaintiffs claim along with the highest court fees of Rs.50,000/- upon the counter claim and prayed before this Learned Court to accept the said counter claim. The defendant No.1 further states that as and when the Learned Court will direct the petitioner to file the advalorem requisite court fees will pay the same as they are ready to pay the same. This defendant No.1 further pray for leave to place the counterclaim in this suit and without leave the granted this defendant No.1 with suffer loss and injury.

3. That this application is made bonafide and for ends of justice.

It is, therefore, prayed that Your Honour may graciously be pleased to pass order for accepting the Counter Claim as filed by this Defendant No.1 today and/or direct him to pay the advalorem court fees if any required and/or may be pleased to further order or orders as Your Honour may deem fit and proper.

And for this Act of kindness your petitioner as in duty bound shall every pray.”

15. This Court finds that no reasons have been assigned, explaining the delay in filing the said counter-claim. Admittedly, the counter-claim was filed on July 13, 2022, whereas, the written statement was filed on January 18, 2021. Towards the end of paragraph 12 of the written statement, the irreparable loss and inconvenience caused to the defendant No.1 has been averred and the fact that the defendant was liable to be compensated by way of damages, was pleaded. The defendant No.1 also reserved its rights to claim damages against the plaintiff in accordance with law.

16. Yet, the contention of Mr. Banerjee that the learned Court had allowed the petitioner to file a counter-claim by the order dated December 16, 2021 when the written statement had been accepted, is not correct. The relevant portion of the written statement is quoted below for convenience:-

“That the defendant No.1 craves leave to file a counter claim separately after cross checking of all the necessary papers and accounts. It is further stated that in terms of clause 32.4.1 of the Concession Agreement the plaintiff was required to give 90 days notice in writing to the defendant no.1 before termination of the agreement but finally the plaintiff grossly neglected and disobeyed the said term and did not give 90 days notice to the defendant no.1 violating the terms depicted in clause 32.4.1 of the said Concession Agreement thus the plaintiff did not comply with one of the essential conditions for terminating the agreement, which is a gross error done by the plaintiff in the process of termination thus the notice dated June 13, 2019 is a defective notice as per law and the plaintiff is not at all entitled to get any relief as claimed in the present suit.”

17. The defendant reserved its right to file a counter-claim after cross checking the papers. The obligation of the defendant No.1/petitioner to file the counter-claim within the time prescribed by judicial authorities would remain, unless exceptional reasons and circumstances could be established. Ordinarily, the counter-claim should have been filed before the issues were

framed. Even after the issues were framed i.e. on April 21, 2022, the counter-claim could have been filed with proper explanation for the delay caused, but before recording of evidence. It was for the learned Trial Judge to exercise discretion in accordance with the law laid down by the Hon'ble Court.

18. In this case, several orders had been passed by the learned trial judge on various dates, but the defendant No.1/petitioner did not deem it necessary to apply before the Court and seek further leave to file the counter-claim. On April 21, 2022, issues were framed in a separate sheet. The learned Advocate for the defendant No.1/petitioner was present. On the same day, learned Advocate Commissioner was appointed to record evidence of the witnesses on behalf of the plaintiff and thereafter to record the evidence of the witnesses of the defendant in the conference room of the Court during court hours. Each of the parties were directed to pay of Rs.15,000/- directly to the learned Commissioner and to deposit the receipt in Court. Writs were directed to be issued after the payment of initial remuneration. Fees of the learned Advocate Commissioner was fixed at Rs.6,500/- per day, including expenses of junior steno-typist and others. The learned Advocate Commissioner was directed to fix the date of evidence upon notice to both the sides and on intimation to the Court. The Advocate Commissioner was further directed to complete the evidence of both sides by fixing consecutive dates, without granting any adjournment. Report was directed to be submitted on May 21, 2022 after completion of evidence. Both the sides were directed to produce their witnesses on the schedule date and

hour as fixed by the learned Advocate Commissioner, Sri Anal Kumar Ghosh. The issues were framed in a separate sheet. Thereafter, an application was filed by the opposite party/plaintiff under Order 14 Rule 5 read with Section 151 of the Code of Civil Procedure. By order dated June 4, 2022, the application was registered as I.A. No.4 of 2022. By the same order, June 16, 2022 was fixed for submission of the witness commissioner's report after completion of evidence. The opposite party/plaintiff filed an application under Order 6 Rule 17 of the Code of Civil Procedure and by order dated June 9, 2022, the application was registered as I.A. No.05 of 2022. Plaintiff filed another application, under Order 7 Rule 14 and Order 11 Rules 1(5) read with Section 151 of the Code of Civil Procedure. The same was registered as I.A. No.06 of 2022. Order was passed on July 6, 2022 directing the learned Commissioner to file a report after completion of evidence. Again, the opposite party/plaintiff filed an application which was registered as I.A. No.08 of 2022 for keeping the witness action in abeyance till the application being I.A. No.06 of 2022 was disposed of.

19. In view of the pendency of the applications filed by the opposite party/plaintiff, Mr. Banerjee contended that the suit had not substantially progressed. There was no reason for the learned Court not to accept the counter-claim.

20. This Court does not accept such contention of Mr. Banerjee. While laying down the law with regard to the time limit within which a counter-claim should be filed, the Apex Court did not lay down the principle that pendency of an application for amendment of a plaint, pendency of other

interlocutory applications for production of documents, etc., were good grounds for extension of time to file a counter-claim. As a general rule, amendment applications can be taken out at every stage of a proceeding, with certain exceptions. Witnesses can also be recalled at any stage, subject to discretion of the court. This would not have any bearing on the principle laid down in the decisions discussed hereinabove, with regard to the time limit within which a counter-claim should be filed. In this case, the witness action was continuing and five interim reports had been filed.

21. The learned Court also directed that the learned Commissioner should complete the witness action within a particular time, by fixing dates. The application for amendment filed by the plaintiff, was for correction of the name of the proforma defendant No.1 in the suit, from “Riverbank Holdings Limited” to “Riverbank Developers Private Limited”. By virtue of an order of amalgamation passed by the High Court “Riverbank Holdings Limited” and “Riverbank Developer Private Limited” amalgamated to form “Riverbank Developers Private Limited”. This change was sought to be made in the array of the defendants in the cause title, by amending the plaint. In paragraph 11 of the objection filed by the petitioner to the application for amendment, it had been categorically mentioned that the application for amendment was barred under the proviso to Clause 6 Rule 17 of the Code of Civil Procedure. According to the petitioner, the amendment was barred, as trial had commenced. It had been contended by the petitioner that if the amendment was allowed, it would practically lead to a de novo trial. Thus, the stand of the petitioner while opposing the application for amendment was that trial

had commenced. The application under Order 14 Rule 5 of the Code of Civil Procedure was filed by the opposite party/plaintiff on April 20, 2022. The same deals with recasting of issue No.6 and deletion of issue nos.9 and 10.

Issue Nos.9 and 10 are set out herein below :-

9. Whether the defendant No.1 is entitled to weekly damages as per clause 15.4 of the Concession Agreement in the case where the total project has not been complete within the time by the Plaintiff purposefully violating the terms of the said agreements?

10. Whether the Defendant no.1 at all liable to pay the Consessioner the claim amount when the total completion of the project not done by the consessioner?"

22. Issue No.6 was to be recast as follows:-

"Whether the defendant No.1 by not issuing fee notification in accordance with Clause-6.1 of the agreement, has committed breach of the agreement".

23. The grounds for seeking deletion of issue Nos.9 and 10 were that, as the defendant No.1/petitioner had not filed their counter-claim for any monetary compensation by way of damages, issue No.9 was beyond the scope of the pleadings and not necessary for determining the matter in controversy. Issue No.10 pre-supposed that the plaintiff had not completed the project. The said issue was connected to issue no.9 and should be deleted.

24. In my opinion, the law is well settled. Issues can be recast any time and the trial Court had not decided such application. However, it is evident from the record that the counter-claim was filed after the plaintiff approached the Court for striking out issue No.9 which was with regard to the claim of the defendant for damages. The plaintiff's contention was that

an issue as to whether the defendant was entitled to any damages could not be decided when the defendant did not file any counter-claim. The defendant/petitioner realized its omission to file the counter-claim upon having received a copy of the said application under Order 14 Rule 5 of the Code of Civil Procedure, and filed the counter-claim after 1.5 years from filing of the written statement, when the evidence was in progress.

25. The scope of general power of superintendence under Article 227 of the Constitution of India, is limited. This court can interfere with the order of the learned trial court under exceptional circumstances, namely, violation of the principles justice, erroneous exercise of jurisdiction and when an order is contrary to law or passed in bad faith. The High Court under Article 227 of the Constitution of India cannot test the legality of the order of the learned Trial Judge through the lens of an appellate body, but only as a supervisory court. In the decision of ***Sadhana Lodh v. National Insurance Co. Ltd.***, reported in **(2003) 3 SCC 524**, the Hon'ble Apex Court held as follows:-

“ 7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal had proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

In the decision of *M/s. Puri Investments v. M/s. Young Friends and Co. and Others*, reported in **2022 SCC OnLine SC 283**, the Hon'ble Apex Court held as follows:-

“14.

We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are:—

- (i) Erroneous on account of non-consideration of material evidence, or
- (ii) Being conclusions which are contrary to the evidence, or
- (iii) Based on inferences that are impermissible in law.

15. We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.

16. In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum.”

26. On facts narrated hereinabove and the law already discussed, this Court finds that the learned trial judge had considered the relevant laws applicable to the facts of the case involved. Applying the decisions of **Ramesh Chand Ardawatiya vs. Anil Panjwani** reported in **(2003) 7 SCC 350** and **Rohit Singh & ors. vs. State of Bihar** reported in **AIR 2007 SC 10**, the learned trial judge found that consequences of permitting a counter-claim either by way of amendment or by way of subsequent pleadings would amount to prolonging the trial and complicating the otherwise smooth flow of the proceedings. The acceptance of the counter-claim would cause delay in the progress of the suit by forcing the court to retreat the steps already taken. In my view, refusal to entertain the belated counter-claim did not prejudice the defendant because the defendant is always entitled to file a suit in accordance with law.

27. Relying on the decision of **SCG Contracts (India) Private Limited vs. K.S. Chamankar Infrastructure Private Limited and ors.** reported in **(2003) 7 SCC 350**, the learned trial judge held that as in a commercial suit the time limit prescribed by law to file a written statement was mandatory and the defendant forfeits his right to file the written statement after such period, the counter-claim should have been filed within reasonable time. Although, in the written statement, the defendant No.1/petitioner prayed for leave to file a counter-claim, the counter-claim was filed on July 13, 2022, after inordinate delay. The written statement was filed on January 18, 2021. The learned trial judge recorded that the affidavit of examination-in-chief was filed on June 9, 2022, P.W.1 had already tendered his evidence. Thus,

even going by the exceptions clause, the outer limit for filing of the counter-claim would be June 9, 2022. The decision in **Ashok Kumar Kalra (supra)** was elaborately discussed in the order impugned. The dissenting view of His Lordship, Justice Shantanagoudar was also taken into consideration. The Court was conscious of the view that filing a counter-claim could be permitted till the stage of commencement of recording of evidence of the plaintiff in exceptional cases and that the choice of the outer limit would suitably be to promote resolution and to render finality to the dispute. The court then proceeded to be decide whether any exceptional circumstances had been made out by the petitioner which prevented the petitioner from setting up the counter-claim, before framing of issues. The suit was filed on October 16, 2020. The written statement was filed on January 18, 2021 and the counter-claim was filed on July 13, 2022. The Court did not find any exceptional circumstances to allow the counter-claim. None were pleaded.

28. The contention of the defendant before the learned Court that the counter-claim could not be filed due to inadvertent procedural laches as the defendant was a public body, was not accepted by the learned Trial Judge on the basis of the observation of the **Hon'ble Apex Court in SLP (C) Diary No.9127 of 2020**. The Hon'ble Apex Court was pleased to observe that if the government machinery was inefficient and incapable of filing appeals and petitions in time, the solution may lie with vesting the legislature with the power to expand the period of limitation for government authorities because of their gross incompetence. Till the statutes subsist, appeals/petitions etc. were to be filed within the prescribed period. The

learned trial court held that the purpose behind the promulgation of the Commercial Court Act, 2015 would be defeated if the counter-claim was accepted when the evidence was being recorded. Moreover, the application for acceptance of the counter-claim did not mention anything about the delay.

29. Under such circumstances, this Court does not find any reason to interfere with the order impugned. The order impugned is upheld as the same is neither erroneous on account of non-consideration of material evidence nor contrary to law. The supervisory court cannot further delve deeper into the factual arena to disagree with the fact finding forum. The onus was on the defendant No.1/petitioner to satisfy the Court that due to very unavoidable reasons, the counter-claim could not be filed within a reasonable period, although the written statement was filed on January 18, 2021. No explanation, whatsoever, was provided in the application for acceptance of the counter-claim. The discretion was rightly exercised by the learned Court below and the revisional application is, thus, dismissed. The petitioner is always at liberty to file a suit, in accordance with law.

30. There shall be no order as to costs.

31. Parties to act on the basis of the server copy of this judgment.

(Shampa Sarkar, J.)