



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

BEFORE

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

WRIT PETITION NO. 31139 OF 2025 (GM-CPC)

BETWEEN:

1. SRI K.V.SHARATH CHANDRA
S/O SRI K R V SETTY, AGE; 58 YEARS,
OCC; ADDITIONAL DIRECTOR GENERAL
KARNATAKA STATE POLICE
ADD;- NO 8, 1ST MAIN ROAD, 8TH CROSS
PRASHANT NAGARA, BASAVESHWARA NAGAR
BANGLAORE-79

...PETITIONER

(BY SRI. DALWAI VENKATESH., ADVOCATE)

AND:

1. M/S. DECO EQUIPMENT PVT LTD
REGISTERED UNDER THE COMPANIES ALF 1956
OFFICE AT C.38, HEBBAL INDUSTRIAL ESTATE
METAGALLI, MYSORE-570001
REPRESENTED BY MANAGING DIRECTOR
MR. DERIE FERNANDES

...RESPONDENT

(BY SMT.SANDHYA.D., ADVOCATE FOR
SRI. RAGHAVENDRA KATTIMANI M., ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI BY QUASHING THE IMPUGNED ORDER DATED 18-9-2025 PASSED BY THE LEARNED 6TH ADDL SENIOR CIVIL JUDGE AND JMFC AT MYSORE IN O.S.NO.676/2023 (I A NO PRODUCED AT ANNEXURE-G IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

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





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

ORAL ORDER

This petitioner by the plaintiff in O.S.676/2023 on the file of the VI Additional Senior Civil Judge and JMFC, Mysore is directed against the impugned order dated 18.09.2025 passed on I.A.No.IV, whereby the said application filed by the respondent/defendant under Order VIII Rule 9 CPC seeking to put forth/introduce a counter claim by amending the written statement was allowed by the trial Court.

2. A perusal of the material on record will indicate that the petitioner/plaintiff instituted the aforesaid suit against the respondent/defendant for ejectment/eviction and for other reliefs in relation to the suit schedule immovable property. The respondent/defendant filed its written statement and contested the suit and sought for its dismissal by putting forth various defences and contentions. Subsequent to framing of issues by the trial Court, the plaintiff examined himself as PW.1 and the matter was set down for cross-examination of PW.1., at which stage, the respondent filed the instant application I.A.No.IV dated 12.03.2025 seeking permission to amend the written



statement and put forth a counter claim against the plaintiff in the suit. The said application having been opposed by the petitioner/plaintiff, the trial Court proceeded to pass the impugned order allowing the application, aggrieved by which, the petitioner is before this Court by way of the present petition.

3. Heard learned counsel for the petitioner and learned counsel for the respondent and perused the material on record.

4. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioner invited my attention to the impugned order in order to point out that the trial Court has failed to consider and appreciate that the respondent/plaintiff had filed the instant application purporting to put forth a counter claim, after commencement of evidence of the petitioner/plaintiff and at the stage of cross-examination of PW.1, which is impermissible in law and contrary to the principles laid down by the Apex Court in the case of **Ashok Kumar Kalra Vs. Wing CDR. Surendra Agnihotri and others** reported in **(2020) 2 SCC 394**, wherein the Apex



Court has categorically held that the outer limit to file a counter claim by the defendant would come to an end and expire upon commencement of evidence and a counter claim cannot be put forth by the defendant after commencement of evidence by the plaintiff. It is submitted that the trial Court has failed to consider and appreciate the well settled legal position in this regard and as such, the impugned order passed by the trial Court deserves to be set aside and the application-I.A.No.IV was liable to be dismissed.

5. *Per contra*, learned counsel for the respondent submits that before filing the present application-I.A.No.IV, the respondent/defendant had filed an application-I.A.No.III under Order XXVI Rule 9 CPC, which was rejected by the trial Court vide Order dated 04.03.2025 on the ground that there was no counter claim filed by the respondent/defendant and in the light of the said order passed by the trial Court rejecting I.A.No.III, the respondent was constrained to file the present application-I.A.No.IV, which was correctly allowed by the trial Court and the impugned order does not warrant interference by this Court in the present petition.



6. I have given my anxious consideration to the rival submissions and perused the material on record.

7. A perusal of the material on record will indicate that it is an undisputed fact as borne out from the material on record that in the aforesaid suit, the respondent/defendant having filed written statement, the trial Court framed issues and the matter was posted for evidence of the petitioner/plaintiff, at which time, the petitioner examined himself as PW.1 on 18.06.2024 and the matter was posted for cross-examination on 31.08.2024. It follows there from that there is no dispute as regards the fact that the evidence in the suit had already commenced and the petitioner/plaintiff having examined himself as PW.1, the matter was set down for cross-examination of PW.1. It is also not in dispute that the instant application-I.A.No.IV was filed by the respondent/defendant on 12.03.2025 after commencement of evidence of PW.1 and at the stage of his cross-examination.

8. The question/issue as to the outer limit when the defendant in a suit can file a counter claim came up for



consideration before the Apex Court in **Ashok Kumar Kalra's**

case supra, wherein it has held as under:

"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.

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*



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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 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*



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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.

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

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.”
(emphasis supplied)

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.

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 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."

9. As can be seen from the ratio laid down by the Apex Court in the case of **Ashok Kumar Kalra** supra, the outer limit for filing a counter claim by the defendant in a suit would come to an end after commencement of evidence. In the instant case, as stated supra, the evidence had commenced in the suit by the petitioner examining himself as PW.1 and it was only after the matter was set down for cross-examination of PW.1 that the respondent chose to file the instant application, which is clearly impermissible in law and not maintainable in the light of the principles laid down by the three Judge Bench of Apex Court in the case of **Ashok Kumar Kalra** supra.

10. Under these circumstances, I am of the considered opinion that the trial Court clearly fell in error in failing to



consider or appreciate the well settled position of law as laid down by the Apex Court in ***Ashok Kumar Kalra's*** case supra, which expressly/clearly prohibits and creates an embargo for the defendant to file a counter claim in the written statement by seeking amendment after commencement of evidence by the plaintiff and failure to appreciate this by the trial Court has resulted in erroneous conclusion.

11. Insofar as the contention urged by the learned counsel for the respondent that necessary pleadings in this regard have already been put forth by the respondent, who was constrained to file the present application in the light of dismissal of I.A.No.III is concerned, notwithstanding the said sequence of events and the facts obtaining in the instant case, they express legal bar/embargo as categorically held by the Apex Court would clearly come in the way of the respondent being permitted to file a counter claim after commencement of evidence and as such, the said contention urged by the respondent cannot be accepted.

12. In the result, the following:

ORDER



- i. Petition is hereby ***allowed***.
- ii. Impugned order dated 18.09.2025 passed on I.A.No.IV the VI Additional Senior Civil Judge and JMFC, Mysore is hereby set aside.
- iii. I.A.No.IV filed under Order VIII Rule 9 of CPC by the defendant stands dismissed.
- iv. Liberty is reserved in favour of the respondent to file a fresh suit as permissible in law subject to all just exceptions and limitation.
- v. In the light of the directions issued by this Court in W.P.No.34656/2024 dated 10.02.2025, the trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

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