

**Reserved on : 07.11.2025**  
**Pronounced on : 25.11.2025**



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25<sup>TH</sup> DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CIVIL REVISION PETITION No.679 OF 2025 (IO)

C/W

CIVIL REVISION PETITION No.680 OF 2025(IO)

**IN CIVIL REVISION PETITION No.679 OF 2025**

**BETWEEN:**

M/S. SANCHAYA LAND AND ESTATES PVT. LTD.,  
HAVING ITS REGISTERED OFFICE AT  
NO.315, 1<sup>ST</sup> MAIN ROAD  
GANGANAGAR, BENGALURU – 560 032,  
REPRESENTED BY ITS  
AUTHORISED SIGNATORY,  
MR. DASTAGIR SHARIFF  
S/O NOORULLA SHARIFF

... PETITIONER

(BY SRI MANJUNATH S., ADVOCATE )

**AND:**

- 1 . HDFC BANK LTD.,  
(FORMERLY HDFC LTD.,  
PRIOR TO AMALGAMATION)

A COMPANY INCORPORATED UNDER  
THE COMPANIES ACT, 1956,  
HAVING ITS REGISTERED OFFICE AT  
RAMON HOUSE, 169, BACKBAY RECLAMATION,  
H T PAREKH MARG,  
MUMBAI – 400 020.

- 2 . SRI DIVAKARAN SUNIL KUMAR  
S/O R DIVAKARAN  
AGED ABOUT 60 YEARS  
RESIDING AT ANANTHEN KERIL HOUSE,  
T V PURAM P.O, MUTHUDATHU KAVU,  
VAIKOM, KOTTAYAM DISTRICT,  
KERALA – 686 606.
  
- 3 . M/S.MRUDANI POWER CONTROLS  
A PROPRIETARY CONCERN OF  
SRI PARAMESHWAR H.S.  
HAVING OFFICE AT NO. 11,  
3<sup>RD</sup> CROSS, SUNKADAKATTE,  
BENGALURU – 560 091.

... RESPONDENTS

(BY SRI VARUN S., ADVOCATE FOR R-1;  
SRI SHIVARAJ N.ARALI, ADVOCATE FOR R-2)

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 115 OF CIVIL PROCEDURE CODE 1908, PRAYING TO a. CALL FOR RECORDS AND SET ASIDE THE ORDER DATED 03.09.2025 PASSED IN COM.O.S.NO.145 OF 2023 ON THE FILE OF THE X ADDITIONAL DISTRICT AND SESSIONS JUDGE (DEDICATED COMMERCIAL COURT), BENGALURU RURAL DISTRICT AT BENGALURU, DISMISSING THE IA FILED BY THE PETITIONER UNDER ORDER 7 RULE 11 READ WITH SECTION 151 OF CPC, TO REJECT THE COUNTER CLAIM FILED BY THE DEFENDANT NO.1 IN THE INTEREST OF JUSTICE AND EQUITY; b. ALLOW THE IA FILED BY THE PETITIONER UNDER ORDER 7 RULE 11 OF THE CPC TO REJECT THE

COUNTER CLAIM FILED BY THE DEFENDANT NO.1/RESPONDENT NO.2 AS AGAINST HE PETITIONER/DEFENDANT NO.2 IN COM O.S.NO.145 OF 2023 ON THE FILE OF THE X ADDITIONAL DISTRICT AND DESSEIONS JUDGE (DEDICATED COMMERCIAL COURT), BENGALURU RURAL DISTRICT AT BENGALURU.

**IN CIVIL REVISION PETITION No.680 OF 2025**

**BETWEEN:**

M/S. SANCHAYA LAND AND ESTATES PVT. LTD.,  
HAVING ITS REGISTERED OFFICE AT  
NO.315, 1<sup>ST</sup> MAIN ROAD  
GANGANAGAR,  
BENGALURU – 560 032  
REPRESENTED BY ITS  
AUTHORISED SIGNATORY  
MR. DASTAGIR SHARIFF  
S/O NOORULLA SHARIFF.

... PETITIONER

(BY SRI MANJUNATH S., ADVOCATE )

**AND:**

1 . HDFC BANK LTD.,  
(FORMERLY HDFC LTD.  
PRIOR TO AMALGAMATION)  
A COMPANY INCORPORATED UNDER  
THE COMPANIES ACT, 1956,  
HAVING ITS REGISTERED OFFICE AT  
RAMON HOUSE, 169,  
BACKBAY RECLAMATION,  
H T PAREKH MARG,  
MUMBAI – 400 020.

- 2 . SRI DIVAKARAN SUNIL KUMAR  
S/O R.DIVAKARAN  
AGED ABOUT 60 YEARS  
RESIDING AT ANANTHEN KERIL HOUSE,  
T V PURAM P.O, MUTHUDATHU KAVU,  
VAIKOM, KOTTAYAM DISTRICT,  
KERALA – 686 606.
- 3 . M/S.BHARATHI ELECTRICALS  
A PROPRIETARY CONCERN OF  
SRI R P MANOJ KUMAR  
S/O RISHIPAL SINGH S.,  
AGED ABOUT 43 YEARS,  
RESIDING AT NO. 113,  
NGEF LAYOUT, 2<sup>ND</sup> STAGE,  
11<sup>TH</sup> CROSS, NAGARBHAVI,  
BENGALURU – 560 072.
- 4 . M/S. SREE CHARAN SOUHARDHA  
CO-OPERATIVE BANK LTD.,  
HEAD OFFICE AT NO. 87/1,  
H B SAMAJA ROAD, BASAVANAGUDI,  
BENGALURU – 560 004.

... RESPONDENTS

(BY SRI VARUN S., ADVOCATE FOR R-1;  
SRI SHIVARAJ N.ARALI, ADVOCATE FOR R-2)

THIS CIVIL REVISION PETITION IS FILED UNDER SECTION 115 OF CIVIL PROCEDURE CODE 1908, PRAYING TO CALL FOR RECORDS AND SET ASIDE THE ORDER DATED 03.09.2025 PASSED IN COM.O.S.NO.146 OF 2023 ON THE FILE OF THE X ADDITIONAL DISTRICT AND SESSIONS JUDGE (DEDICATED COMMERCIAL COURT), BENGALURU RURAL DISTRICT AT BENGALURU, DISMISSIN THE IA NO.25 FILED BY THE PETITIONER UNDER ORDER 7 RULE 11 OF CPC, TO REJECT THE COUNTER CLAIM FILED BY DEFENDANT NO.1 AS AGAINST DEFENDANT NO.2 IN THE

INTEREST OF JUSTICE AND EQUITY; b. ALLOW THE IA NO.25 FILED BY THE PETITIONER UNDER ORDER 7 RULE 11 OF THE CPC TO REJECT THE COUNTER CLAIM FILED BY THE DEFENDANT NO.1/RESPONDENT NO.2 AS AGAINST THE PETITIONER/DEFENDANT NO.2 IN COM.O.S.NO.146 OF 2023 ON THE FILE OF THE X ADDITIONAL DISTRICT AND SESSIONS JUDGE (DEDICATED COMMERCIAL COURT), BENGALURU RURAL DISTRICT AT BENGALURU.

THESE CIVIL REVISION PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.11.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

The petitioner-defendant No.2, who is common in both these petitions, is at the doors of this Court calling in question two separate orders passed by the Commercial Court in Commercial O.S.No.145 of 2023 and Commercial O.S. 146 of 2023, both dated 03-09-2025, by which the applications filed by the petitioner in I.A.Nos.24 and 25 under Order VII Rule 11 of the CPC, in the respective suits, seeking rejection of the counter claim made by the 1<sup>st</sup> defendant come to be rejected. For the sake of convenience, the

facts obtaining in Civil Revision Petition No.679 of 2025 would be narrated.

2. Heard Sri S.Manjunath, learned counsel appearing for the petitioner, Sri S.Varun, learned counsel appearing for respondent No.1 and Sri Shivaraj N. Arali, learned counsel appearing for respondent No.2.

3. Facts in brief, germane, are as follows:

3.1. 1<sup>st</sup> respondent-plaintiff / Housing Development Corporation is said to have sanctioned a housing loan to the 2<sup>nd</sup> respondent-1<sup>st</sup> defendant for purchase of an apartment in the apartment project "The Greens" of the petitioner-defendant No.2. A sale agreement, construction agreement and a tripartite agreement come to be executed between the 1<sup>st</sup> respondent-plaintiff, the 2<sup>nd</sup> respondent-1<sup>st</sup> defendant and the petitioner-2<sup>nd</sup> defendant on 19-11-2014 and 25-04-2015. As per the said agreements, the petitioner-defendant No.2 was required to retain possession of the apartment purchased by the 2<sup>nd</sup> respondent-1<sup>st</sup> defendant until the

completion of the project. The petitioner-defendant No.2 was thereafter required to execute a registered sale deed in favour of the 2<sup>nd</sup> respondent-1<sup>st</sup> defendant. As per the terms of the tripartite agreement, the petitioner-defendant No.2 could not have cancelled the allotment or refused to execute a registered sale deed in favour of the 2<sup>nd</sup> respondent-1<sup>st</sup> defendant, without obtaining a no-objection certificate from the 1<sup>st</sup> respondent-plaintiff. However, the petitioner-defendant No.2 executes a registered sale deed in favour of respondent No.3-defendant No.3 in respect of the apartment purchased by 2<sup>nd</sup> respondent-1<sup>st</sup> defendant. Therefore, the 1<sup>st</sup> respondent-plaintiff files a suit in Commercial O.S. No.145 of 2023 seeking specific performance of the tripartite agreement and a direction directing the petitioner-defendant No.2 to execute a registered sale deed in favour of the 2<sup>nd</sup> respondent-1<sup>st</sup> defendant and to declare the sale deed dated 10-03-2020 executed by the petitioner-2<sup>nd</sup> defendant in favour of the 3<sup>rd</sup> respondent-3<sup>rd</sup> defendant to be null and void.

3.2. The petitioner/2<sup>nd</sup> defendant files its written statement contending that there was no cause of action against the present

petitioner, as the 1<sup>st</sup> defendant had failed to pay the entire sale consideration. Therefore, the agreement stood cancelled and after such cancellation, a sale deed was executed in favour of defendant No.3. The 1<sup>st</sup> defendant/2<sup>nd</sup> respondent herein also files his written statement, and along with the written statement, files a counterclaim not only against the plaintiff, but also against defendant No.2, the co-defendant. By way of counterclaim, the 1<sup>st</sup> defendant sought multiple reliefs including declaration of obligations against the 2<sup>nd</sup> defendant under the agreements. The petitioner-defendant No.2 files an application in I.A. No.24 to reject the counter claim, on the score that a counter claim against a co-defendant is not maintainable. The application so filed by the petitioner comes to be rejected. Therefore, the petitioner-defendant No.2 is now before this Court in the subject petitions.

4. The learned counsel appearing for the petitioner would vehemently contend that a counterclaim is not maintainable against a co-defendant. He would seek to place reliance upon the judgment of the Apex Court in the case of **ROHIT SINGH v. STATE OF BIHAR** reported in **(2006) 12 SCC 734** and the judgment of the

Punjab and Haryana High Court in the case of **ASHOK KUMAR SHARMA v. RAKESH KUMAR SHARMA** reported in **2024 SCC OnLine P & H 4859** to buttress his submission that counterclaim against a co-defendant is not entertainable.

5. Per contra, the learned counsel appearing for the 1<sup>st</sup> respondent would vehemently refute the submissions in contending that the petitioner has to first cross the threshold bar of maintainability of the petition. It is his submission that a revision petition against an interlocutory order passed by the Commercial Court under Section 8 of the Commercial Courts Act, 2015 ('the Act' for short) cannot be held to be maintainable and if the revision is not maintainable, none of the submissions of the petitioner should merit any consideration. In the event this Court would hold that revision is maintainable, the learned counsel for the 1<sup>st</sup> respondent would seek to place reliance upon the judgment of the Apex Court in the case of **RAJUL MANOJ SHAH v. KIRANBHAI SHAKRABHAI PATEL** reported in **2025 SCC OnLine SC 1958** and **ROHIT SINGH** to buttress his submission that counterclaim against a co-defendant if it touches upon the rights of the plaintiff would be

maintainable. He would contend that the judgment rendered by the Punjab and Haryana High Court is long before the judgment of the Apex Court and, therefore, the judgment of the Apex Court in the case of **RAJUL MANOJ SHAH** would prevail. The learned counsel representing the 2<sup>nd</sup> respondent-1<sup>st</sup> defendant would also toe the lines of the learned counsel appearing for the 1<sup>st</sup> respondent in contending that petitions are not maintainable and even if they are held to be maintainable, he would adopt the submissions of the 1<sup>st</sup> respondent.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In the light of the submissions and contra submissions of respective parties, the following issues fall for my consideration:

- (i) **Whether the revision against interlocutory orders passed by the Commercial Court would be maintainable and entertainable?**
- (ii) **Whether the subject petitions can be converted into petitions under Article 227 of the Constitution of India and issues be decided?**

**(iii) Whether a counterclaim is maintainable against a co-defendant?**

**Issue No.1:**

**(i) Whether the revision against interlocutory orders passed by the Commercial Court would be maintainable and entertainable?**

7.1. The petitioner has preferred these revision petitions assailing interlocutory orders rendered by the concerned Court in the aforementioned commercial original suits. Since the respondents have raised substantial objections touching the very root of maintainability, this Court is compelled to now navigate the statutory frame work that governs the threshold bar. For the said purpose, it is necessary to advert to the relevant provisions of the Act. Sections 8 and 13 of the Act read as follows:

**"8. Bar against revision application or petition against an interlocutory order.—Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of Section 13, shall be raised only in an appeal against the decree of the Commercial Court.**

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**13. Appeals from decrees of Commercial Courts and Commercial Divisions.—(1) Any person aggrieved by the**

**judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.**

**(1-A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:**

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

(Emphasis supplied)

A plain yet purposive reading of Section 8 reveals that the legislation has consciously employed a sweeping non-obstante clause of express embargo against entertaining any civil revision application or petition directed against an interlocutory order of a Commercial Court. The provision mandates that any challenge to such order must await the stage of appeal directed against the

decree, subject to the conditions in Section 13 of the Act. Section 13 deals with appeals from decrees of Commercial Courts. Any person aggrieved by a judgment or order of a Commercial Court exercising original civil jurisdiction as the case may be, may appeal to the Commercial Appellate Division of the High Court.

7.2. In the present case, the interlocutory orders impugned concern rejection of application under Order VII Rule 11 of the CPC preferred in both Commercial O.S.No.145 of 2023 and Commercial O.S.No.146 of 2023, whereby, the petitioner – defendant No.2 have sought rejection of the counter claim set up by defendant No.1 on the ground that counter claim is not entertainable against a co-defendant. Had these proceedings arisen in the regime of a regular civil suit, a revision petition challenging the order refusing to reject a plaint or counter claim under Order VII Rule 11(d) might have well been maintainable. However, the statutory landscape under the Act is distinct, the statutory bar under Section 8 is unequivocal leaving little interpretative wiggle room. The question therefore becomes imperative whether on such statutory inhibition the Court may nonetheless entertain such challenge. The question is no

longer *res integra*. A Division Bench of the High Court of Delhi in the case of **BLACK DIAMOND TRACKPARTS PRIVATE LIMITED v. BLACK DIAMOND MOTORS PRIVATE LIMITED**<sup>1</sup>, has held as follows:

“.... .... .”

**9.** The question of maintainability of a petition under Article 227 of the Constitution of India, with respect to proceedings in a commercial suit before the District Judge (Commercial) arose, because Section 8 of the Commercial Courts Act as under:

**“8. Bar against revision application or petition against an interlocutory order.—** *Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge, subject to the provisions of section 13, shall be raised only in an appeal against the decree of the Commercial Court.”*

**10.** Expressly bars the remedy of “civil revision application or petition”. It was deemed apposite to hear the counsels on, whether by use of the word “petition” in addition to the words “civil revision application”, though with a “or” between them, the purport of Section 8 supra was to also bar the remedy of Article 227 petition with respect to proceedings in a commercial suit at the level of the District Judge. The remedy under Article 227 of the Constitution of India, it was felt, was similar/identical/at par with the remedy of a civil revision application under Section 115 of the CPC and it was thus deemed appropriate to frame the question no. (i) aforesaid and hear the counsels thereon. Similarly, it was deemed apposite to hear the counsels on the reasoning which prevail with the Single Judge, that since appeals against orders in a commercial suit at

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<sup>1</sup> 2021 SCC OnLine Del 3946

the level of the District Judge are to be heard by the Commercial Appellate Division, petitions under Article 227, if maintainable, emanating from proceedings in such suits should also be heard by the Commercial Appellate Division. Accordingly, question no. (ii) aforesaid was framed.

**11.** The senior counsel for the respondent in CM (M) No. 132/2021, in our view, has rightly contended and none of the other counsels have controverted, that the remedy under Article 227 being a constitutional remedy could not be affected by a statute framed by a legislature which was itself a creature of constitution. **A creature of the Constitution of India cannot act in negation of the provisions of the Constitution of India. We are reminded of *Surya Dev Rai v. Ram Chander Rai* (2003) 6 SCC 675, concerned with the impact of the amendment in Section 115 of the CPC brought about by the amendment of the CPC with effect from 1<sup>st</sup> July, 2002. In the wake of the said amendment, a question arose, whether on such amendment restricting/limiting the orders of the subordinate courts with respect to which a revision application under Section 115 of the CPC could be preferred to the High Court, an aggrieved person was completely deprived of the remedy of judicial review under Article 227 also. It was held, that curtailment of revisional jurisdiction of the High Court did not take away and could not have taken away the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court, nor was the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. It was further held that the said power continued to exist, untrammelled by the amendment in Section 115 CPC and remained available to be exercised, subject to the rules of self-discipline and practice, which were well settled. Similarly, in *State of Gujarat v. Vakhatsinghji Vajesinghji, Vaghela* AIR 1968 SC 1481, *Jetha Bai and Sons, Jew Town, Cochin v. SunderbasRathenai* (1988) 1 SCC 722, *State of H.P. v. DhanwantSingh* (2004) 13 SCC 331 and *Union of India v. Major General Shri Kant Sharma* (2015) 6 SCC 773 it was held that the legislature cannot take away the power of superintendence of the High Court under Article 227 of the Constitution over all Courts and Tribunals which are within the territories in**

**relation to which the High Court exercises its jurisdiction.**

Rather, in *L. Chandra Kumar v. Union of India* (1997) 3 SCC 261, judicial review including under Article 227, was held to be a basic feature of the Constitution, even beyond the realm of amendability and Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent excluded the jurisdiction of the High Court and Supreme Court under Articles 226/227 and 32 of the Constitution with respect to matters falling within the jurisdiction of the Courts and Administrative Tribunals referred to therein, were held to be unconstitutional.

**12. Thus, the question no. (i) aforesaid is answered by holding that the petition under Article 227 of the Constitution of India to the High Court with respect to orders of the Commercial Courts at the level of the District Judge is maintainable and the jurisdiction and powers of the High Court has not been and could not have been affected in any manner whatsoever by Section 8 of the Commercial Courts Act. The use of the word "petition" in Section 8 is not and could not have been with reference to a petition under Article 227 of the Constitution and is with reference to a revision application/revision petition only.**

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**31.** We are of the view that once the Commercial Courts Act has expressly barred the remedy of a revision application under Section 115 of the CPC, with respect to the suits within its ambit, the purpose thereof cannot be permitted to be defeated by opening up the gates of Article 227 of the Constitution of India. **The scope and ambit of a petition under Article 227 is much wider than the scope and ambit of a revision application under Section 115 of the CPC; whatever can be done in exercise of powers under Section 115 of the CPC, can also be done in exercise of powers under Article 227 of the Constitution. Allowing petitions under Article 227 to be preferred even against orders against which a revision application under Section 115 CPC would have been maintainable but for the bar of Section 8 of the Commercial Courts Act, would nullify the legislative mandate of the Commercial Courts Act.** Recently, in *Deep Industries Limited v. Oil and Natural Gas Corporation Limited* (2020) 15 SCC 706, in the context of petitions under

Article 227 of the Constitution of India with respect to orders in an appeal against an order of the Arbitral Tribunal under Section 17 of the Arbitration & Conciliation Act, 1996, it was held that if petitions under Article 226/227 of the Constitution against orders passed in appeals under the Arbitration Act were entertained, the entire arbitral process would be derailed and would not come to fruition for many years. It was observed that though Article 227 is a constitutional provision which remains untouched by a non-obstante Clause 5 of the Arbitration Act but what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing First Appeals under the Arbitration Act, yet the High Court would be extremely circumspect in interfering with the same taking into account the statutory policy, so that interference is restricted to orders which are patently lacking in inherent jurisdiction. Thus, though we are of the view that gates of Article 227 ought not to be opened with respect to orders in commercial suits at the level of the District Judge against which a revision application under CPC was maintainable but which remedy has been taken away by the Commercial Courts Act, but abiding by the judgments aforesaid, hold that it cannot be said to be the law that jurisdiction under Article 227 is completely barred. However the said jurisdiction is to be exercised very sparingly and more sparingly with respect to orders in such suits which under the CPC were revisable and which remedy has been taken away by a subsequent legislation i.e. the Commercial Courts Act, and ensuring that such exercise of jurisdiction by the High Court does not negate the legislative intent and purpose behind the Commercial Courts Act and does not come in the way of expeditious disposal of commercial suits.”

(Emphasis supplied)

The said judgment of the Division Bench of the Delhi High Court, is followed by the High Court of Odisha in the case of **NARAYAN NAIK v. RANJITA NAIK**<sup>2</sup>, wherein it is held as follows:

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<sup>2</sup> 2025 SCC OnLine Ori 2112

".... ....

**17. The provisions of Section 8 of the Commercial Courts Act, 2015 cannot operate as an absolute bar to exercise of the power under Article 227 of the Constitution of India. Section 8 despite its initial non-obstante clause, cannot operate as an absolute bar to the exercise of the power of judicial review by the High Courts, which is conferred by the Constitution of India under Article 227 thereof, since the 2015 Act is a subordinate legislation under the Constitution, the latter being the ground norm of the Indian legal system cannot obstruct the powers of this Court under Articles 226 and 227 of the Constitution of India.**

**18.** A creature of the Constitution of India cannot act in negation of the provisions of the Constitution of India. This Court is reminded of *Surya Dev Rai v. Ram Chander Rai*<sup>1</sup>, concerned with the impact of the amendment in Section 115 CPC brought about by the amendment of the CPC with effect from 1-7-2002. In the wake of the said amendment, a question arose, whether on such amendment restricting/limiting the orders of the subordinate courts with respect to which a revision application under Section 115 CPC could be preferred to the High Court, an aggrieved person was completely deprived of the remedy of judicial review under Article 227 also. It was held, that curtailment of revisional jurisdiction of the High Court did not take away and could not have taken away the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court, nor was the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. It was further held that the said power continued to exist, untrammelled by the amendment in Section 115 CPC and remained available to be exercised, subject to the rules of self-discipline and practice, which were well settled. Similarly, in *State of Gujarat v. Vakhatsinghji Vajesinghji Vaghela*<sup>2</sup>, *Jetha Bai & Sons v. Sunderdas Rathenai*<sup>3</sup>, *State of H.P. v. Dhanwant Singh*<sup>4</sup> and *Union of India v. Shri Kant Sharma*<sup>5</sup> it was held that the legislature cannot take away the power of Superintendence of the High Court under Article 227 of the Constitution over all

courts and tribunals which are within the territories in relation to which the High Court exercises its jurisdiction. Rather, in *L. Chandra Kumar v. Union of India*<sup>6</sup>, judicial review including under Article 227, was held to be a basic feature of the Constitution, even beyond the realm of amendability and Clause 2(d) of Article 323-A and Clause 3(d) of Article 323-B, to the extent excluded the jurisdiction of the High Court and Supreme Court under Articles 226/227 and 32 of the Constitution with respect to matters falling within the jurisdiction of the courts and Administrative Tribunals referred to therein, were held to be unconstitutional.

19. Parliament has, mandated that no civil revision application or petition shall be entertained against the interlocutory order of Commercial Court. Parliament has taken care to provide that an interlocutory order on the issue of jurisdiction also cannot be made the subject-matter of challenge and any challenge to such order shall be raised only in an appeal against the decree of Commercial Court. Having regard to the legislative object and the intent of the legislature in barring the remedy of revision, which is otherwise available to a party in civil proceedings, the exercise of writ jurisdiction under Article 227 of the Constitution of India, though not ousted, yet needs to be informed by the limited nature of the said jurisdiction, lest the legislative object of proscribing revision would be defeated if the legality, propriety and correctness of every order passed by the Commercial Court is examined in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.

**20.** Thus this petition under Articles 226 and 227 of the Constitution of India with respect to orders of the Commercial Courts at the level of the District Judge is maintainable and the jurisdiction and powers of the High Court have not been affected in any manner whatsoever by Section 8 of the Commercial Courts Act. However, this Court shall endeavour to exercise restraint unless the matter warrants interference.”

(Emphasis supplied)

The Division Bench of the High Court of Delhi and the single judge Bench of the High Court of Odisha, while analyzing the legislative intent and the scheme of the Act, hold that the statutory bar against revision under Section 8 of the Act is absolute. Therefore, interlocutory orders passed by Commercial Courts is not amenable to revisional jurisdiction. The High Court of Delhi and the High Court of Odisha in the afore-quoted judgments observe that jurisdiction under Article 227 can never be taken away by projecting a bar against revision petitions created under Section 8 of the Act. In that light, the petitioner, in the case at hand, who has filed the revision petitions ought to have preferred a petition under Article 227 of the Constitution of India.

7.3. This Court, on 12-09-2025, had passed an order disposing of these petitions on a submission made by the learned counsel for the petitioner that he would file an appeal. Thereafter, it was immediately moved contending that the appeal is not maintainable and, therefore, the revision petitions would be maintainable. Owing to the application so filed by the petitioner, this Court passed the following order on 24-09-2025:

**"ORAL ORDER ON I.A.NO.2 OF 2025**

The subject petition was disposed on 12.09.2025 owing to the fact that an alternative remedy of filing an appeal was available. Learned counsel for petitioner has moved the matter on the score that the submission was erroneously made that an appeal remedy was available. According to the learned counsel, appeal is not a remedy that is available under the Statute and would submit that he would convince the Court.

In that light, application is allowed and the order dated 12.09.2025 stands recalled and petition is restored to file.

Tag this petition along with CRP No.680 of 2025 and list the matters on 14.10.2025 to hear the learned counsel for petitioner and the respondents, further.

In the light of interim order subsisting in the connected case, there shall be an interim order, in the subject petition as well, till the next date of hearing."

No doubt, an appeal as obtaining under Section 13 of the Act would not be maintainable, as it is only against a decree passed by the Commercial Court. However, as held by the High Court of Delhi followed by the High Court of Odisha, to which I am in complete agreement of, the revision petition cannot be entertained. The petitioner will have to prefer a petition under Article 227 of the Constitution of India and not a revision petition under Section 115 of the CPC. Therefore, I hold that revision petitions will not be maintainable against interlocutory orders passed by the Commercial Court under Section 8 of the Act.

**Issue No.2:****(ii) Whether the subject petitions can be converted into petitions under Article 227 of the Constitution of India and issues be decided?**

8.1. Having thus concluded that the present revision petitions are not maintainable within the statutory contours of Section 8 of the Act, the issue now would be, whether this Court may in the interest of justice, treat the present proceedings, as petitions invoking the supervisory jurisdiction, of this Court under Article 227 of the Constitution of India. Such treatment is neither novel nor unprecedented. The power of the High Court under Article 227 of the Constitution of India, exists independent of and unaffected by statutory curtailments applicable to the revisional jurisdiction under the CPC. The Apex Court in the case of **COL.ANIL KAK (RETD.) v. MUNICIPAL CORPORATION, INDORE**<sup>3</sup>, has held as follows:

".... ....

2. All that the High Court has done is to treat the petition filed before it under Section 115 of the Code as a proceeding initiated under Article 227 of the Constitution. The respondents had filed the revision originally and during the pendency of that revision the High Court appears to have taken a view that an order in an appeal arising from a proceeding under Order 39

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<sup>3</sup> (2005) 12 SCC 734

Rules 1 and 2 of the Code, could not be challenged under Section 115 of the Code since the order was in the nature of an interlocutory order. **In such a situation, in our view, the High Court rightly decided to permit the revision petitioners before it, to convert the same as a proceeding under Article 227 of the Constitution. After all, the court could have done it on its own, even without a motion in that behalf by the petitioner. We see absolutely no ground to interfere with the said order on the grounds raised in this special leave petition. Hence, this special leave petition is dismissed."**

(Emphasis supplied)

**The Apex Court has expounded, that even when statutory bar expressly curtails revisional or appellate remedies, such ouster cannot be extended to trammel the constitutional powers of the High Court under Article 226 or 227 of the Constitution of India.** The Apex Court was considering whether the High Court was right in treating a petition filed before it under Section 115 of the Code as a proceeding under Article 227 of the Constitution of India. The High Court had decided the issue by converting the revision petition into a petition under Article 227. The Apex Court refused to interfere.

8.2. A Division Bench of the High Court of Telangana in the case of **NCC LIMITED v. NATIONAL INSTITUTE OF TECHNOLOGY NIT**<sup>4</sup>, has held as follows:

“ .... .... ”

**15. The issue of maintainability of the present Civil Revision Petitions (CRPs) should be answered first.**

**16. The bar contained in section 8 of The Commercial Courts Act, 2015 ('the 2015 Act') pertains to entertaining Civil Revision Petitions from an interlocutory order of a Commercial Court including any order on the issue of jurisdiction of the Commercial Court. Section 8 of the 2015 Act mandates that a challenge to an interlocutory order passed by a Commercial Court shall be filed in accordance with the statutory framework of section 13 of the 2015 Act.** In other words, the correct route would be to file an appeal under section 13(1) or (1A) of the Act.

17. The Supreme Court in *Shalini Shyam Shetty Vs. Rajendra Shankar Patil* delineated the principles on the exercise of the High Court's jurisdiction under Article 227 of the Constitution of India and limited the scope of such power in matters of interference in orders of Courts inferior to the High Courts. The power to interfere was circumscribed within the boundaries of patent perversity, gross or manifest failure of justice or violation of the principles of natural justice. In other words, the Supreme Court held that the power of superintendence should be sparingly exercised only in fit cases i.e., to keep strict administrative control of the Courts within the territory of the High Court.

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<sup>4</sup> **Civil Revision Petition Nos. 2714, 2715 and 2716 of 2024 decided on 29-04-2025**

18. A Division Bench of this High Court in M.V.Ramana Rao Vs. N.Subash considered the issue of maintainability of a CRP against the embargo contained in the 2015 Act and diluted the stricture contained therein by drawing a distinction between the power of revision under section 115 of The Code of Civil Procedure, 1908 ('CPC') and under Article 227 of the Constitution of India. **The High Court held that the power of judicial review under Article 227 cannot be taken away by section 8 of the 2015 Act but cautioned against misuse of the power in undeserving cases. A Division Bench of the High Court of Andhra Pradesh expressed the same opinion i.e., section 8 of the 2015 Act is confined to a CRP filed under section 115 of the CPC and does not operate as a bar to the jurisdiction of a High Court under Article 227 of the Constitution of India.**

19. In Blue Cube Germany Assets Gmbh And Co. KG Vs. Vivimed Labs Limited, a Division Bench of the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh clarified that although the nomenclature given by the Court under Article 227 of the Constitution of India is 'Civil Revision Petition' it is not equivalent to a Revision Petition under section 115 of the CPC. **It was further clarified that the power of judicial superintendence vested in a High Court under Article 227 of the Constitution cannot be equated to ordinary revisional jurisdiction. The Court also clarified that the petitions filed under Article 227 in several High Courts are not referred to as 'Civil Revisions' but as 'Writ Petitions (Civil)'. In other words, the Division Bench held that the nomenclature of 'Civil Revision Petition' to petitions filed under Article 227 would not fall within the statutory bar in section 8 of the 2015 Act.**

20. The discussion becomes somewhat academic in view of the Supreme Court's decision in Col. Anil Kak (Retd.) Vs. Municipal Corporation, Indore **where it was held that a High Court is authorized to convert a petition filed under section 115 of the CPC to a proceeding under Article 227 of the Constitution on its own even without a motion in that behalf by the petitioner before it.**

21. Therefore, the argument of the respondent that the CRPs are not maintainable in view of the bar in section 8 of the

2015 Act cannot be accepted. We accordingly hold that the CRPs are maintainable.”

(Emphasis supplied)

The Division Bench of the High Court of Telangana follows the judgment of the Apex Court in the case of **ANIL KAK** *supra*. The Division Bench also was faced with the circumstance of non-maintainability of revision petition filed against an interlocutory order under Section 8 of the Commercial Courts Act. The Division Bench holds that filing of a petition under Section 115 CPC does not operate as a bar to the jurisdiction of a High Court under Article 227 of the Constitution of India, but however in the facts holds that civil revision petition is maintainable.

8.3. Driving back to the cases at hand, as observed hereinabove, the petitions are filed under Section 115 of the CPC projecting them to be revision petitions against an order rejecting the counterclaim under Order VII Rule 11 of the CPC. In the light of the law laid down by the Apex Court, which is followed by the Division Bench of the High Court of Telangana under identical circumstance, I deem it appropriate to answer the core issue in the

cases at hand, by converting the subject petitions, to that of petitions under Article 227 of the Constitution of India. I therefore, answer the issue accordingly.

**Issue No.3:**

**(iii) Whether a counterclaim is maintainable against a co-defendant?**

9.1. The subject issue forms the *kernel* of the *conundrum*. This concerns the issue of maintainability of a counterclaim directed against a co-defendant. The plaintiff is HDFC Bank. The plaintiff institutes the suits in Commercial O.S.Nos.145 of 2023 and 146 of 2023 for specific performance of a tripartite agreement which directs the present petitioner to execute a sale deed in favour of the 1<sup>st</sup> defendant. The second prayer in both suits is to declare the sale deeds dated 10-03-2020 and 13-03-2020 executed by the present petitioner in favour of the 3<sup>rd</sup> defendant to be null and void. The 3<sup>rd</sup> prayer is to declare that the plaintiff has exclusive charge over the suit schedule property. The cause of action that leads to the institution of both the suits is that the petitioner/developer has an agreement with the homebuyer and the plaintiff-Bank, but the

developer sells the property to defendant No.3 during the subsistence of a mortgage between the other two. Two suits spring on identical cause of action between these parties as there were two transactions. Defendants 1 and 2 filed separate written statements. While so doing, the 1<sup>st</sup> defendant files a counter claim against the plaintiff and the 2<sup>nd</sup> defendant. Therefore, the issue is whether the counterclaim of defendant No.1 against the 2<sup>nd</sup> defendant was maintainable. The actions then spring – one from the hands of the plaintiff, the HDFC Bank and the other from the hands of the present petitioner/defendant No.2, the developer. The concerned Court on the following reasons rejects both the applications. The reasons so rendered insofar as they are germane, in Commercial O.S.No.145 of 2023, are as follows:

".... ....

26. But, in the humble opinion of this court, this case law also cannot be relied upon and applied by this court. Because, this decision also is not rendered on the order passed on the application filed under order VII rule 11 of CPC. It is rendered on the order passed on the application filed under section 10 of CPC. As mentioned above, in this decision, also, it is not the observation of Hon'ble High court that in such case, the counter claim of the defendant shall be resulted in the rejection of plaint invoking order 7 rule 11 of CPC. The question before the said court was also not whether the defendant can make a counter claim against the co-defendant or not. The question was as to whether there is application of section 10 of CPC to the facts

and circumstances of the said case or not. This can be easily make out from the observations of the Hon'ble High Court in para no.11 of the said judgment. It is clearly observed in the said para that the interse dispute between the plaintiff and defendant is not a subject matter of earlier suit. They are co-defendants in the earlier suit. The plaintiff cannot file cross suit against defendant to protect his suit land in the pending first appeal and thus present suit is very much maintainable and not liable to be stayed.

27. Moreover, it is to be noted that in **Rohit Singh Vs State of Bihar** referred supra, with due respect and in the humble opinion of this court, Hon'ble Supreme Court has not held that the counter claim is not maintainable against the co-defendant. As per the observations of the said case, if the counter claim is made solely against co-defendant, then it is not maintainable. If the counter claim-is made incidentally or along with the plaintiff, then it is maintainable. In this regard for clarity and brevity and for ready reference, the observation of the Hon'ble Supreme court in para 21 of the said judgment is extracted hereunder.

**21. Normally, a counter-claim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counter-claim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against the co-defendants in the suit. But a counter-claim directed solely against the co-defendants cannot be maintained. By filing a counter-claim the litigation cannot be converted into some sort of an interpleader suit. Here, defendants 3 to 17 had no claim as against the plaintiff except that they were denying the right put forward by the plaintiff and the validity of the document relied on by the plaintiff and were asserting a right in themselves. They had no case even that the plaintiff was trying to interfere with their claimed possession. Their whole case was directed against defendants 1 and 2 in the suit and they were trying to put forward a claim as against the State and were challenging the claim of the State that the land involved was a notified forest in the possession of the State. Such a counter-**

**claim, in our view, should not have been entertained by the trial court.**

**28. From the above observation of the Hon'ble Supreme court it is very clear that there is no bar for the defendant to make a counter claim against the co-defendant if same is directed along with the plaintiff. Such claim may be incidental or along with the plaintiff. However, such claim solely against the co-defendant cannot be maintained.** Therefore, the decision relied upon by the defendant No.2 as per decision reported in **2024 SCC on line MP 1301** stated supra is also not useful to the defendant No.2. The another decision relied upon by the defendant No.2 is the decision reported in **2024 SCC on line P and H 4859** rendered in case of **Ashok Kumar Sharma Vs Rakesh Kumar Sharma and others**. The defendant No. 2 relying upon observation Hon'ble High Court made in para 18, 19 and 20 of the said decision contended that the counter claim of the defendant against the co-defendant is not maintainable and liable to be rejected under order VII rule 11 of CPC.

**29. But, again it is significant to note that this decision is also not rendered in the background of the application under order 7 rule 11 of CPC. The facts and circumstances of this case and the relied case also are different and distinguishable. In the present suit, it is to be noted that the plaintiff, defendant No.1 and defendant No.2 have entered into Tripartite Agreement dated 25/04/2015. There are numerous obligations to be performed by each party as per the said document. Those obligations are mutual and ancillary each other. As per the said document each party is entitled for seeking the performance. Admittedly the defendant no.2 has sold the subject flat to the defendant No.3. If it was not sold, even the defendant No. 2 could have been sought for specific performance against the plaintiff and defendant No.1. Therefore, the set of facts and circumstances involved in the present case and that of the case relied. by the defendant No.2 are different and distinguishable. Hence, the said decision is also not applicable to the case.**

**30. All the more, it is to be noted even for the sake of arguments, it is taken that all the decisions relied upon**

by the defendant No.2 are applicable to the case on hand and the counter claim of the defendant No.1 is not maintainable, even then, in the opinion of this court, the application filed by the defendant No.2 cannot be allowed by this court. Because, none of the decisions relied upon by the defendant no.2 lays down the law that if the counter claim is not maintainable, then such the counter claim of the defendant has to be rejected under order VII rule 11 CPC. However, under these circumstances, a question may arise as to what happens to the counter-claim made by the defendant and how it would effect the co-defendant against whom counter-claim is made. It is to be noted that answer to this question can be found in the third judgment relied upon by the defendant No.2 rendered in case of Ashok kumar Sharma Vs Rakesh Kumar sharma and other stated supra. In para 20 of the said judgment the Hon'ble High Court of Punjab and Hariyana relied upon its earlier decision rendered in case Soma Devi Vs Dashmiri Lal reported in 2017 (4) Law herald 3362 and held that:

"In case defendant filed counter claim against a co-defendants then co-defendant has not been given any right to file written statement to the counter claim under order VII rule 6A. Nor has a defendant been given any entitlement to make an application for exclusion of a counter claim filed by co-defendant against him. Nor the default of a defendant to file written statement in counter claim by a co-defendant, is prescribed as ground for pronouncing the judgment against such a co-defendant. Even the balance of the relief after adjustment of counter claim is not contemplated to be granted against the co-defendant by the CPC."

31. As such from the above observations of the Hon'ble Punjab and Hariyana High Court, what this court conclude is that, if the defendant makes a counter-claim which is not provided under law, then the co-defendant against whom the counter claim is made need not answer such counter claim. Under such circumstances, the averments made by way counter claim by the co-defendant become redundant and useless. Ultimately.

while deciding the case on merits, the court can give a finding over it. It is to be noted that as per the contentions of the defendant No.2, the law does not provide the defendant No.1 for the filing the counter-claim against the co-defendant/Defendant No.2. If that is the case, at the same time, it has to be noted that law also does not provide for filing application for rejection of counter-claim made against co-defendant. It is to be noted that in the present case, it is not that the counter-claim of the defendant is barred under any law, but is a case where there is no provision for filing the counter claim by the defendant against the co-defendant. Unless and until some law prohibits the counter-claim of the co-defendant No.1, this court is bound to take it on record. This court can decide its maintainability its proof, validity etc., during the trial. The plaintiff and defendant No.2 can convince this court on merits about the counter claim of the defendant no.1 against them. Therefore, under these circumstances, viewed from any angle, at this stage, the question of rejecting the counter claim of the defendant No.1, against the defendant No.2 or the plaintiff, that too invoking order VII rule 11 of CPC would not arise at all. Therefore, application filed by the defendant No.2 has to be rejected. **Accordingly, point No.2 is answered in the negative.**

32. **Point No. 3**: In view of this court's answers to point No. 1 to 3 this Court proceeds to pass the following:

### **ORDER**

**IA No.23 filed by the plaintiff under Order 7 Rule 11(b) and (d) read with Section 151 of CPC and IA-24 filed by the defendant No. 2 under order 7 rule 11 of CPC to reject the counter claim of the defendant No.1 are hereby rejected.**

**Call for further chief of Dw1 and 2.**

**It is notice that since long time the case is pending for trial. The parties are making the applications one or other. This was also**

**once posted for argument. Therefore, all the parties to the suit are directed to complete the proceedings without seeking further adjournments.**

**Call on 04/09/2025.”**

(Emphasis added)

It is the aforesaid order that has driven the petitioner to this Court in the subject petitions. What was projected before the concerned Court is projected before this Court as well. Therefore, it becomes necessary to notice the provision of law viz., Order VIII Rule 6A & 6E of the CPC, which deal with counter claim and default of plaintiff to reply to the counter-claim. They read as follows:

**“6A. Counter-claim 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 counter-claim 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 counter-claim is in the nature of a claim for damages or not:**

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counter-claim 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 counter-claim.

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

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

(Emphasis supplied)

A perusal at Order VIII Rule 6A would in the first blush indicate any counterclaim is required to be directed only against the plaintiff and not against the defendants. The Apex Court in the case of **ROHIT SINGH**<sup>5</sup> *supra* interprets the very provision, and holds as follows:

“.... .... .”

**21. Normally, a counterclaim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counterclaim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against the co-defendants in the suit. But a counterclaim directed solely against the co-defendants cannot be maintained. By filing a counterclaim the litigation cannot be converted into some sort of an interpleader suit.** Here, Defendants 3 to 17 had no claim as against the plaintiff except that they were denying the right put forward by the plaintiff and the validity of the document relied on by the plaintiff and were asserting a right in themselves. They had no case even that the plaintiff was trying to interfere with their claimed possession. Their whole case was directed against Defendants 1 and 2 in the suit and they were trying to put forward a claim as against the State and were challenging the claim of the State that the land involved was a notified forest in the possession of the State. Such a

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<sup>5</sup> (2006) 12 SCC 734

counterclaim, in our view, should not have been entertained by the trial court.”

(Emphasis supplied)

The Apex Court holds, normally a counter claim though based on different cause of action than the one put in the suit by the plaintiff, could not be made. But, in the case before the Apex Court the counterclaim was necessarily directed against the plaintiff though incidentally along with it, it had a relief claimed against a co-defendant. If the relief claimed against co-defendant touches upon a counter claim on the plaintiff, it would become maintainable is what the Apex Court holds.

9.2. A learned single Judge of this Court interpreting Order VIII Rule 6A CPC in the case of **M/s ALLIANCE UNIVERSITY v. SUDHIR**<sup>6</sup>, has held as follows:

“.... ....

**84.** Order VIII, Rule 6 A of the CPC deals with counter-claim by defendant. It is as under:

**6A. Counter-claim 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*

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<sup>6</sup> **2017 SCC Online Kar 1084**

*of counter-claim against the claim of the plaintiff, any right 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 counter-claim is in the nature of claim for damages or not:*

*Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.*

- (2) *Such counter-claim shall have the same effect as a cross-suit as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.*
- (3) *The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.*
- (4) *The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints."*

**85. A bare perusal of Order VIII, Rule 6A of the CPC clearly reveals that the counter-claim is to be filed "against the claim of the plaintiff". It can be filed with regard to "any right or cause of action accruing to the defendant", but "against the plaintiff. That the counter-claim can be filed only "against the plaintiff" is further borne out by Or. VIII, Rules 6B to 6F of the CPC. Thus, the counter-claim cannot be filed against any other person or entity who is not the plaintiff. It is, indeed, trite to state that the purpose of permitting a counter-claim to be filed in a suit is to lessen multiplicity of litigation. Since the suit and the counter-claim are to be tried together, the common trial permits the same court to decide the issues which may not only be common, but also may be proved by same or similar evidence. Therefore, the counter-claim can be filed only qua the plaintiff. Of course, it is true that through the counter-claim the defendant is permitted to raise other cause of action, besides the ones raised by the plaintiff. But**

**nonetheless, the focus of the other cause of action still has to be “against the plaintiff”, and not against others.”**

(Emphasis supplied)

The learned Judge holds that the counter claim against the defendant no doubt can be made, but the cause of action and focus should still be against the plaintiff and not the other co-defendant.

9.3. The Apex Court in the case of **RAJUL MANOJ SHAH v. KIRANBHAI SHAKRABHAI PATEL**<sup>7</sup>, after considering **ROHIT SINGH** and the law on the issue has held as follows:

“.... ....

**17. Re: Defendant no. 2’s claim of specific relief not maintainable against appellant:** Ld. Sr. Counsel for the appellant has argued that in terms of Order VIII Rule 6A of CPC, a counter-claim must be filed seeking relief against the plaintiff and cannot be filed against a co-defendant, for a counter-claim must necessarily deal with the defendant’s cause of action against the plaintiff. On the other hand, Ld. Counsel for the respondent submits that the counter-claim seeks two substantive reliefs, namely, partition and specific performance. Consequently, it is contended that the counter-claim is not directed solely against a co-defendant, for, in an independent suit seeking the very same reliefs, the appellant would necessarily have to be impleaded as a party. The ultimate relief sought by defendant no. 2 is a declaration of co-ownership of the deceased sister-in-law of plaintiff and a consequent decree of specific performance as against that ownership on the basis of the agreement of sale.

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<sup>7</sup> 2025 SCC Online SC 1958

**18.** Order VIII, Rule 6A, CPC enables a defendant to set up a counter-claim. Said provision is extracted as below;

**6A. Counter-claim 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 counter-claim 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 counter-claim is in the nature of a claim for damages or not:*

*Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court.*

- (2) *Such counter-claim 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 counter-claim.*
- (3) *The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the court.*
- (4) *The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.*

(emphasis supplied)

**19. As per Rule 6-A(1), a defendant may assert any right or claim against the plaintiff before the filing of the written statement, even if such cause of action is unrelated to the plaintiff's suit. The only limitation is that the counter-claim must lie within the pecuniary jurisdiction of the court. Such a counter-claim is treated as a cross-suit and is governed by the rules applicable to plaints, including the obligation to disclose the cause of action and pay requisite court fees. The legislative intent is to avoid multiplicity of proceedings by allowing both the original suit and the counter-claim to be tried and**

disposed of in a single trial, thereby avoiding prolonged and protracted litigation as held in *Jag Mohan Chawla v. Dera Radha Swami Satsang*.

**20.** Rule 6A provides that counter-claim shall be against the claim of the plaintiff and such right or claim shall be in respect of cause of action accruing to defendant against the plaintiff. This Court in *Rohit Singh* (supra) held;

*"21. Normally, a counterclaim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counterclaim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against the co-defendants in the suit. But a counterclaim directed solely against the co-defendants cannot be maintained. By filing a counterclaim the litigation cannot be converted into some sort of an interpleader suit....."*

**21.** The above observations have been reiterated with approval in subsequent pronouncement in *DamodharNarayan Sawale v. Tejrao Bajirao Mhaske*, by observing as under;

*"39. The decision of this Court in Rohit Singh v. State of Bihar also assumes relevance in the above context. This Court held that a defendant could not be permitted to raise counterclaim against co-defendant because by virtue of Order 8 Rule 6-A CPC, it could be raised by the defendant against the claim of the plaintiff."*

**22.** In the present case, defendant no. 2 sought to raise a counter-claim primarily for the relief of specific performance of agreement dated 21.10.2011 executed in his favour by deceased original defendant no. 1 with respect to her undivided share in the suit property, by a direction to the Nazir, the substituted representative of defendant no. 1, to execute a sale deed in pursuance of the agreement to sell. **The relief of specific performance as sought to be raised by defendant no. 2 cannot be set up by way of a counter-claim since the same is not directed against the appellant/plaintiff,**

**but is instead directed solely against the co-defendant. In view of this, defendant no. 2 is held to be disentitled to raise prayer of specific performance by way of counter-claim. This is simply not permissible, and this position is no more res-integra in view of the decision of this Court in *Rohit Singh (supra)*.**

**23.** Defendant no. 2 however submits that he has not only claimed the relief of specific performance, but has also sought partition of suit property to separate the share he is entitled to under the agreement. Defendant must first establish a right of claim over the property, which is absent<sup>9</sup> till he succeeds against the estate of defendant no. 1 and only thereafter that the question of setting up a counter claim against plaintiff may arise. Thus, the submission that there is also a claim for partition must fail for the same reason."

(Emphasis supplied)

9.4. A meticulous examination of the Authorities is indispensable to resolve the present controversy. The Apex Court in the case of **ROHIT SINGH** *supra* holds that a counterclaim by its very nature, is a defendants' actionable claim against the plaintiff and ordinarily cannot be an independent claim against the co-defendant. The Apex Court observes that permitting such cross-litigation within the same suit would distort the procedural fabric of the *lis* and blur the roles of the plaintiff/s and the defendant/s. In **ASHOK KUMAR SHARMA**, the Punjab and Haryana Court adopted a similar view. It reaffirmed that a counterclaim directed

exclusively against the co-defendant is not maintainable. On a plain reading of Order VIII Rule 6-A of CPC contemplates a counterclaim against the plaintiff and not *inter se* between the defendants. The legal position as enunciated in the case of **ROHIT SINGH** is reiterated in **RAJUL MANOJ SHAH**, but with a degree of refinement. The Apex Court in **RAJUL MANOJ SHAH** considers the purpose and sweep of Order VIII Rule 6-A CPC. The Apex Court holds that, while it is true that a counter claim is primarily intended as a defendant/s claim against the plaintiff, the mere fact that reliefs sought against the plaintiff incidentally or necessarily affect a co-defendant, or incidentally touches upon the claim of the plaintiff, such counterclaim would not become contrary to law. It is trite that the counterclaim substantially concerns or implicates the plaintiff. If the counter-claim so filed against a co-defendant implicates or concerns the plaintiff and not solely the co-defendant, the said counterclaim does not vitiate its maintainability. **What is impermissible in law is a counterclaim exclusively against a co-defendant, one that bears no nexus to the plaintiff's claim or the *lis* between the plaintiff and the defendants.**

9.5. The Apex Court in the case of **RAJUL MANOJ SHAH** *supra* considers the judgment in the case of **ROHIT SINGH** *supra* and holds that defendant No.2 sought to raise a counterclaim primarily for relief of specific performance of agreement dated 21-10-2011 executed in favour of defendant No.1. The Apex Court after looking into the written statement so set up observes that the relief of specific performance as sought to be raised by defendant No.2 cannot be set up by way of counterclaim, since the same was not directed against the plaintiff but instead directed solely against the co-defendant. In that view, the 2<sup>nd</sup> defendant therein was held to be disentitled to raise a prayer of specific performance by way of a counter claim against the co-defendant.

9.6. When the present counterclaim is scrutinized through the prism of **ROHIT SINGH** and **RAJUL MANOJ SHAH**, it becomes evident that the reliefs sought by the 1<sup>st</sup> defendant in the counterclaim is not in isolation to counter the plaintiff's claim, rather it is interwoven with the obligations arising out of a tripartite agreement and consequent rights asserted by the plaintiff. The allegations and the relief are interconnected; they relate to the

contractual matrix governing the loan transaction, the construction agreement and the tripartite agreement, all of which are central to the plaintiff's suit. The agreement was between the Bank, the developer and the home buyer. The developer has sold it to the 3<sup>rd</sup> defendant. Now, by way of counterclaim defendant No.1 seeks to annul the sale deed made in favour of defendant No.3 as null and void. In the said counterclaim, the prayer is not restricted to declaration of sale deed in favour of defendant No.3 as null and void, but compensation is sought against the plaintiff and defendant No.2 jointly and severally and declaration of obligations against defendant No.2 under the agreements to be null and void. Therefore, the counterclaim does touch upon claim against the plaintiff and does not entirely relate to the co-defendant.

9.7. If a suit for specific performance is sought at the hands of the co-defendant, it would have been an altogether different circumstance. The prayer is sought against the plaintiff and the co-defendant in the counterclaim. The concerned Court, at paragraphs 15 and 16, quotes the prayer in the counterclaim. On a bare perusal of the prayer, it is clear that the counterclaim is not only

directed against the co-defendant, but is also against the plaintiff/HDFC Bank as well. Therefore, no fault can be found with the order so passed by the concerned Court, simply for the reason that, both in **ROHIT SINGH** and **RAJUL MANOJ SHAH** the Apex Court holds that the counterclaim has to be directed towards the plaintiff and may incidentally be made against the defendants. **Therefore, I answer the issue holding that generally Order VIII Rule 6A is a complete bar for a counter claim to be raised solely against the co-defendant, but if the relief sought in the counterclaim would touch upon the claim against the plaintiff as well, it cannot be held to be barred.** In the case at hand, the prayer in the counterclaim of the 1<sup>st</sup> defendant clearly indicates several facts against the plaintiff as well. The commercial Court, while dismissing the applications under Order VII Rule 11 CPC, has applied the test correctly. **As observed, the counterclaim in its substance and character is not an isolated claim between defendants *inter se*. It is inextricably linked to the plaintiff's cause of action and the composite contractual obligations binding the parties.** Upon such consideration, this Court finds no infirmity in the reasoning of

the Commercial Court. The issue is answered holding that the counterclaim as framed, is maintainable and does not warrant rejection under Order VII Rule 11 CPC.

10. Finding no merit in the petitions, the petitions stand ***rejected.***

Interim order, if any subsisting, shall stand dissolved.

**Sd/-  
(M.NAGAPRASANNA)  
JUDGE**

BKP  
CT:MJ