



2025:CHC-AS:1698

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**C.O. 2449 of 2025
Gayatri Granites & Ors.
VS.
Srei Equipment Finance Ltd.**

For the Petitioners : Mr. Ratnanko Banerji, Sr. Adv.
Mr. Nirmallya Dasgupta
Mr. Mary Dutta

..... advocates

For the Opposite Party : Mr. Suddhasatva Banerjee
Mr. Swatarup Banerjee
Mr. Sarijul Haque
Mr. Rajib Mullick
Ms. S. Jha

..... advocates

Reserved on : 09.07.2025

Judgment on : 01.09.2025

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the respondent in an Arbitration Proceeding being A.P. No. 146 of 2023 and is directed against an order dated June 26, 2025 passed by the learned arbitrator.
2. By the order impugned, the application for amendment of the Statement of Defence to introduce the prayer for counter claim stood rejected.



3. On an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short the “1996 Act”) being filed, a former Judge of this Hon’ble Court was appointed as the sole Arbitrator.
4. The opposite party herein filed its Statement of Claim (for short “SoC”) and the petitioner filed its Statement of Defence (for short “SoD”). The claimant witness no. 1 adduced evidence and was discharged. Thereafter, the Affidavit of Evidence (for short “AoE”) was filed by the respondent/petitioner. Evidence of the respondent witness no. 1 was closed. Thereafter, the respondent/petitioner filed an application for recall of the respondent witness no. 1 which was allowed and the examination of respondent witness no. 1 was fixed on March 13, 2025. On that date i.e., on March 13, 2025 the respondent/petitioner filed an application for amendment of the SoD. The learned Tribunal rejected the application for amendment of SoD by order dated June 26, 2025, which is under challenge in this civil revision application.
5. Mr. Ratnanko Banerji, learned Senior Advocate appearing for the petitioners submits that the petitioners herein filed its evidence in the form of an affidavit wherein a repayment schedule has been set out wherefrom it would be evident that there exists no dues from the petitioner herein on account of closure of the loan account. He further contended that the petitioners herein have consistently made payments towards the multiple installments under each facility as defined in the master facility agreement but the petitioners have failed to provide a detailed statement of accounts which would render adjudication in respect of the loan arbitration incomplete and unsubstantiated. He further contended that the necessary documents have been filed along with affidavit in chief but through inadvertence the petitioners have not lodged any counter claim along with SoD. He contended that the petitioners are only seeking to introduce the counter claim as the documentary evidence in support of such counter claim has already been on record. He submitted that the proposed amendments are necessary for the purpose of deciding the real controversy between the parties in the



arbitration proceedings. Mr. Ratnanko Banerji further contended that Section 23(3) of the Arbitration and Conciliation Act, 1996 allows a party to amend the statement of claim or defence during the course of the arbitral proceedings. He further contended that there is no embargo upon the learned Arbitrator to allow the application for amendment after the commencement of trial as Section 23(3) of the 1996 Act does not put any embargo upon the learned Arbitrator to allow an amendment after commencement of trial. Mr. Ratnanko Banerji learned Senior Advocate placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Anr.*** reported at **(2022) 16 SCC 1** in support of his contention that the prayer for amendment is to be allowed if the same is required for effective and proper adjudication of the controversy between the parties.

6. Mr. Suddhasatva Banerjee, learned Advocate appearing for the opposite party raised an objection as to the maintainability of this application under Article 227 of the Constitution of India. He contended that Section 5 of 1996 Act expressly bars intervention of the courts except in matters expressly provided for in the Act. He further contended that Section 37 of the 1996 Act only provides for a remedy of appeal against certain orders which have been mentioned therein. He contended that the Hon'ble Supreme Court have time and again held that an application under Article 227 of the Constitution of India should not be entertained against interlocutory orders passed by the learned Arbitrator. In support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of ***Deep Industries Ltd. v. ONGC***, reported at **(2020) 15 SCC 706**; ***Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.***, reported at **(2022) 1 SCC 75** and ***Serosoft Solutions (P) Ltd. v. Dexter Capital Advisors (P) Ltd.***, reported at **(2025) SCC Online SC 22**. Mr. Banerjee thus submitted that this Court should not interfere in exercise of the powers under Article 227 of the Constitution of India against an order rejecting an application for amendment of the SoD. Mr. Suddhasatva Banerjee further contended that though the learned Senior Advocate appearing for the petitioners have



placed reliance upon the provision of Section 23(3) of the 1996 Act while attacking the findings of the learned Arbitrator, but before the learned Arbitrator such ground was not taken, and what was urged by the petitioners before the learned Arbitrator was that the provisions laid down under Order 6 Rule 17 of the Code of Civil Procedure shall be applicable. Mr. Banerjee contended that the application for amendment was rightly rejected by the learned Arbitrator.

7. Heard the learned advocates for the parties and perused the materials placed.
8. Chapter V of the 1996 Act deals with conduct of arbitral proceedings. Section 23 falls under Chapter V and it deals with statement of claim and defence. For purpose of adjudication of the dispute involved in the civil revision application it would be beneficial to take note of the provisions laid down under Section 23 of the 1996 Act for which the same is extracted hereinafter.

“23. Statements of claim and defence.—(1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.



(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.”

9. Subsection 2A of Section 23 enables a respondent to submit a counter claim or plead a set off, which shall be adjudicated upon by the arbitral tribunal, if such counter claim or set off falls within the scope of arbitration agreement. Upon a reading of Section 23 as a whole and more particularly Subsection 2A thereof, to the mind of this Court, no time limit has been prescribed within which the respondent may submit a counter claim. The only limitation for submitting a counter claim as provided in sub-section (2A) is that the same shall have to fall within the scope of arbitration agreement.
10. Order 8 Rule 6A of the Code of Civil Procedure deals with counter claim by the defendant in a suit. It states that 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 limit for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not.
11. Proviso thereto states that such counter claim shall not exceed the pecuniary limits of the jurisdiction of the Court.
12. The limitation as prescribed under Order 8 Rule 6A (1) of the Code of Civil Procedure is that the cause of action for such counter claim shall have to accrue either before or after the filing of the suit but before the defendant has delivered his defence or before the time limit for delivering his defence has expired.
13. However, Section 23(2A) of the 1996 Act does not impose a similar limitation for submission of a counter claim by a respondent in an arbitration proceedings.



14. It is well settled that counter claim can be set up along with written statement. Such a counter claim can also be set up by way of amendment of the written statement under Order 6 Rule 17 of the Code of Civil Procedure. It is also permissible to set up a counter claim by invoking the provisions of Order 8 Rule 9 of the Code of Civil Procedure. Thus, a counter claim can be set up along with the written statement or even after filing of such written statement by way of amendment of the written statement or by way of subsequent pleading. However, the cause of action of such counter claim has to accrue either before or after the filling of the suit but before the defendant had delivered his defence or before the time limit for delivering his defence has expired.
15. Neither in Order 8 Rule 6A of the Code of Civil Procedure nor in Section 23 of the 1996 Act any time limit within which a counter claim may be set up in a suit or for submission of a counter claim in an arbitration proceedings has been provided.
16. Three Hon'ble Judges of the Supreme Court of India in the case ***of Ashok Kumar Kalra v. Wing CDR. Surendra Agnihotri***, reported at **(2020) 2 SCC 394** noted that even if a counter claim is filed within the limitation period, the Trial Court has to exercise its discretion by balancing in such a manner so that the substantive justice is not defeated. The Hon'ble Supreme Court held that Order 8 Rule 6A of the Code of Civil Procedure does not give absolute right to the defendant to file the counter claim with substantive delay, even if the limitation period prescribed has not elapsed. It was further held that the Court has to take into consideration the outer limit for filing the counter claim which is pegged till the issues are framed. The Hon'ble Supreme Court further in paragraph 21 of the said reports mentioned certain factors which the Courts have to take into consideration for exercising discretion to entertain the filing of counter claims. Paragraph 21 of the said reports reads thus:



“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.”*

17. In paragraph 21 of the said reports it has been held that the counter claim cannot be allowed to be set up after framing of issues.
18. Justice M.M. Shantanagoudar while partly concurring and partly dissenting with the views expressed by the other two Hon'ble Judges agreed with the conclusion of the other two Hon'ble Judges that a Court may exercise its discretion and permit the filing of a counter claim after the written statement, till the stage of framing of the issues. However, in addition to that, His Lordship held that in exceptional situations, the subsequent filing of a counter claim may be permitted till the stage of commencement of recording of the evidence on behalf of the plaintiff.
19. Though the arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 and the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings and the arbitral tribunal may also conduct the proceedings in the manner it considers appropriate in view of Section 19 of the 1996 Act but the fact



remains that the 1996 Act have fixed certain time schedule for completion of the statement of claims and defence under Section 23(4) of the 1996 Act. Section 29A has also fixed the time limit for making an arbitral award. The time limit under Section 23(4) of the 1996 Act will commence from the date of appointment of the arbitrator whereas the time limit under Section 29A has been fixed taking the date of completion of pleadings under Section 23(4) to be the starting point.

20. This Court is, therefore, of the considered view that the provisions of Section 23(2A) has to be interpreted in such a way that would strike a balance between the right to speedy trial and the right to file counter claim so that the substantive justice is not defeated.
21. To the mind of this Court, the proposition of law laid down by the Hon'ble Supreme Court fixing the outer limit for filing counter claim under Order 8 Rule 6A of the Code of Civil Procedure can be applied to the arbitration proceedings also.
22. This Court accordingly holds that the counter claim in an arbitration proceedings shall not be allowed to be filed after the issues are framed and only in exceptional cases filing of a counter claim may be permitted till the stage of commencement of recording evidence of the claimant in the arbitration proceedings as there is no substantial progress in the proceedings between the framing of issues and the commencement of witness action.
23. In the case on hand, the respondent/petitioner sought to incorporate the counter claim by way of amendment of SoD. Such application for amendment of SoD was admittedly filed after the closure of the evidence of the claimant.
24. Section 23(3) of the 1996 Act enables a party to amend or supplement his claim or defence during the course of arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.



25. The learned Arbitrator recorded a factual finding that the application for amendment is not based on any subsequent event or incident which took place after the commencement of trial and also that the respondents were well aware of relevant facts which they have sought to be introduced by way of amendment. This Court finds that the delay in filing the application of amendment has not been satisfactorily explained. That apart an application for amendment of SoD to set up a counter claim cannot be allowed after commencement of the evidence of claimant. For all the reasons as aforesaid this Court holds that the learned Arbitrator was right in rejecting the application for amendment of SoD.
26. The Hon'ble Supreme Court in ***Sanjeev Builders Private Limited*** (supra) held that the prayer for amendment is to be allowed if the amendment is required for effective and proper adjudication of the controversy to the parties, and to avoid multiplicity of proceedings provided the amendment does not result in injustice to the other side.
27. In the case on hand allowing the application for amendment of SoD to incorporate the counter claim at this belated stage would definitely cause serious prejudice and injustice to the claimant.
28. There is no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in ***Deep Industries Limited*** (supra) and ***Bhaven Construction*** (supra) and ***Serosoft Solution Private Limited*** (supra) that interference under Article 227 is permissible only if the order is completely perverse and the same should be exercised in exceptional rarity if there is a jurisdictional error. In the case on hand, this Court does not find that the order impugned is either perverse or there is any jurisdictional error, for this Court to interfere in exercise of powers under Article 227 of Constitution of India.
29. In ***NTPC Limited*** (supra) it has been held that an order dismissing an application under Section 23(3) of the 1996 Act is only a procedural order and does not qualify as an "interim award" amenable to challenge under



Section 34 of the 1996 Act. The said decision is not applicable to the case on hand as the issue that falls for consideration is whether SoD can be allowed to be amended for setting up a counter claim after framing of issues.

30. For all the reasons as aforesaid, this Court is not inclined to interfere in the order impugned. Accordingly CO 2449 of 2025 stands dismissed. There shall be, however, no order as to costs.
31. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)

(P.A.-Sanchita)