

[2026] 8 S.C.R. 185 : 2026 INSC 684

**A.K. Ghosh & Company and Others
v.
Biman Bose and Others**

(Civil Appeal No(s). 8814-8815 of 2026)

13 July 2026

[Sanjay Kumar* and K. Vinod Chandran, JJ.]

Issue for Consideration

Does the mandatory time frame prescribed by the proviso to Or.VIII r.1 of the Code of Civil Procedure, 1908, apply to the filing of a written statement by the plaintiff to a counter-claim raised by the defendant in a suit governed by the Commercial Courts Act, 2015.

Headnotes[†]

Commercial Courts Act, 2015 – Code of Civil Procedure, 1908 – Or.VIII, r.1, r.6E – Mandatory time frame – Written statement to counter-claim – By order dated 19.08.2024 in GA (COM) No.4 of 2024 in CS (COM) No.440 of 2024, a Judge of the Calcutta High Court held that the appellants herein, viz., the plaintiffs in the suit, CS (COM) No.440 of 2024, were not entitled to file their written statement to the counter-claim of the respondents, viz., defendant Nos.1, 2, 3, 5 and 6 in the said suit, after expiry of the period of 120 days and dismissed their application for leave to do so – Correctness:

Held: A plaintiff in a commercial suit, governed by the CC Act, is bound by the mandate of the proviso to Or.VIII r.1 CPC, as applicable to a commercial suit, and must file a written statement to a counter-claim by a defendant therein, ordinarily within 30 days from the date of service of summons or receipt of the counter-claim, and in the event a plaintiff fails to file such a written statement within that time but offers sufficient cause for the delay, the Court may extend the time to do so, for reasons to be recorded in writing and upon payment of appropriate costs, but not beyond 120 days from the date of service of summons upon the plaintiff/receipt of the counter-claim by the plaintiff. [Para 33]

Commercial Courts Act, 2015 – s.13 (1A) – Code of Civil Procedure, 1908 – Or.XLIII – Arbitration and Conciliation Act, 1996 – The Single Judge of the Calcutta High Court held

^{*} Author

Supreme Court Reports

that the appellants herein, viz., the plaintiffs in the suit, CS (COM) No.440 of 2024, were not entitled to file their written statement to the counter-claim of the respondents, after expiry of the period of 120 days – Assailing the said order, the appellants filed an appeal in AO-COM/35/2024 before a Division Bench (Commercial Division) of the Calcutta High Court – However, the appeal was dismissed on the ground of maintainability as well as on its merits, *vide* order dated 26.02.2025 – Whether the appeal filed before the Division Bench of the High Court was maintainable:

Held: In the light of the statutory scheme and the decisions of this Court, it is clear that an appeal would lie u/s.13(1A) only if the order sought to be appealed against finds mention either in Or.XLIII CPC or s.37 of the Arbitration and Conciliation Act, 1996 – As an order passed under Or.VIII CPC is not appealable u/Or.XLIII CPC, the question of the plaintiffs maintaining an appeal against the order of the Judge denying them leave to file a belated written statement to the counter-claim raised by the contesting defendants does not arise – Thus, the Division Bench committed no error in holding that the appeal, apart from being devoid of merit, was not even maintainable. [Para 37]

Case Law Cited

SCG Contracts (India) Private Limited v. K.S. Chamankar Infrastructure Private Limited and others [2019] 3 SCR 1050 : (2019) 12 SCC 210; *Nasima Naqi v. Todi Tea Company Limited and Others* [2019] 17 SCR 1048 : (2023) 17 SCC 641; *BGS SGS SOMA JV v. NHPC Limited* [2019] 17 SCR 742 : (2020) 4 SCC 234; *Kandla Export Corporation and Another v. OCI Corporation and Another* [2018] 1 SCR 915 : (2018) 14 SCC 715 – referred to.

Nirottam Sharma v. Ramkishore and Another, SB Civil WP No.18024 of 2016, decided on 07.02.2018; *CSCO LLC and Another v. Lakshmi Saraswathi Spintex Limited and Others* Appl. No.4791 of 2021 in CS No. 697 of 2017 decided 28.01.2022; *Indcon Boiler Ltd. v. Maeda Corporation India and Others*, CM (M) 767/2019 & CM Appl. 23274/2019 on 17.09.2019; *Nasima Naqi v. Todi Tea Company Limited and Others* (2019) 1 Cal LT 305 : (2019) 2 Cal LJ 232; *Dattaram Krishnanath Pednekar and Others v. Pandurang K. Pednekar and Others*, 2010 (7) Mh.L.J.386; *Mrs. Shalini Nunes Mascarenhas v. Mr. Trevor Nunes*, 2009 (2) Goa LR 222 – referred to.

A.K. Ghosh & Company and Others v. Biman Bose and Others**List of Acts**

Commercial Courts Act, 2015; Civil Procedure, 1908; Code of Civil Procedure (Amendment) Act, 1976; Arbitration and Conciliation Act, 1996; 'The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

List of Keywords

Written Statement; Counter-claim; Order VIII Rule 6A to 6G, CPC; Condonation of Delay; Speedy Disposal; Order XLIII CPC; Maintainability.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No(s). 8814-8815 of 2026

From the Judgment and Order dated 19.08.2024 and 26.02.2025 of the High Court of Calcutta in GA-COM No. 4 of 2024 and AO-COM No. 35 of 2024 respectively.

Appearances for Parties

Advs. for the Appellant(s):

Jaidip Gupta, Sr. Adv., Soumitra Ghose Chaudhuri, Soumya Dutta, Suryanu Sengupta, Riddhi Bose, Ms. Racheeta Chawla, Ms. Rishi Agarwal, Siddhant Upmanyu, Ms. Sampriti Baksi, Raibat Sinha, Sourabh Tandon, Sourav Mukherjee.

Advs. for the Respondent(s):

Rauf Rahim, Sr. Adv., Indranil Ghosh, Palzer Moktan, Ms. Aanchal Tikmani, Mujadid Gilani, Ali Asghar Rahim, Mohsin Rahim, Ms. Tania Tamannah.

Judgment / Order of the Supreme Court**Judgment**

Sanjay Kumar, J.

1. Leave granted.
2. *'Does the mandatory time frame prescribed by the proviso to Order VIII Rule 1 of the Code of Civil Procedure, 1908, apply to the filing of*

Supreme Court Reports

a written statement by the plaintiff to a counter-claim raised by the defendant in a suit governed by the Commercial Courts Act, 2015¹?’

3. This is the question that presently beseeches decision.
4. By order dated 19.08.2024 in GA (COM) No. 4 of 2024 in CS (COM) No. 440 of 2024, a learned Judge of the Calcutta High Court held that the appellants herein, viz., the plaintiffs in the suit, CS (COM) No. 440 of 2024, were not entitled to file their written statement to the counter-claim of the respondents, viz., defendant Nos. 1, 2, 3, 5 and 6 in the said suit, after expiry of the period of 120 days and dismissed their application for leave to do so. Assailing the said order, the appellants filed an appeal in AO-COM/35/2024 before a Division Bench (Commercial Division) of the Calcutta High Court. However, the appeal was dismissed on the ground of maintainability as well as on its merits, *vide* order dated 26.02.2025. In consequence, the appeals on hand.
5. On 23.05.2025, this Court stayed further proceedings in the suit on the file of the Calcutta High Court.
6. Parties shall be referred to hereinafter as arrayed in the suit.
7. The plaintiffs supplied printing paper to the defendants from time to time. Disputes having arisen as to payment therefor, the plaintiffs got issued legal notice dated 16.06.2021, claiming that a sum of ₹74,65,527/- was payable to them with interest thereon. The defendants denied the claim by way of letter dated 28.06.2021. The plaintiffs, thereupon, filed a recovery suit in CS No. 274 of 2022, which was later renumbered as CS (COM) No. 440 of 2024 on the file of the Calcutta High Court. Defendant Nos. 1, 2, 3, 5 and 6, viz., the contesting defendants, filed their written statement in the said suit and raised a counter-claim. Copies of the written statement and counter-claim were served upon the Advocate-on-Record for the plaintiffs, under letter dated 18.07.2023.
8. However, it was only on 15.03.2024, i.e., after the expiry of 238 days, that the plaintiffs filed an application before the learned Judge seeking leave to file their written statement to the said counter-claim. The learned Judge dismissed the application, *vide* order dated

1 For short, ‘the CC Act’

A.K. Ghosh & Company and Others v. Biman Bose and Others

19.08.2024. Therein, the learned Judge noted that, though Order VIII Rule 6A(3) of the Code of Civil Procedure, 1908 (CPC), permitted a plaintiff to file a written statement to a defendant's counter-claim within such time as may be fixed by the Court, no such time had been fixed in the case on hand. However, as Order VIII Rule 6G CPC extended all the rules applicable to the filing of a written statement by a defendant to the filing of a written statement in answer to a counter-claim, the learned Judge held that the plaintiffs could not wriggle out of the time frame fixed under Order VIII Rule 1 CPC, as applicable to a commercial suit. He also noted that Order VIII Rule 10 CPC visited an embargo upon the Court from receiving a belated written statement. Reference was also made to Rule 12A of the Original Side Rules of the High Court, which requires a plaintiff to file a written statement to a defendant's counter-claim within 10 days from the date of receipt of the notice of the filing thereof or such further time as may be allowed. The learned Judge, accordingly, held that the plaintiffs' written statement to the counter-claim was beyond time and dismissed their application.

9. In appeal, the Division Bench noted that the provisions of the CC Act were stringent with regard to filing of pleadings and, more particularly, a written statement. It was observed that the plaint along with a writ of summons is served upon a defendant in a suit and, upon such service, the obligation of that defendant to file a written statement arises and, similarly, for a reply to a counter-claim which, in effect, partakes the character of a written statement, upon service of an authenticated copy of a written statement raising a counter-claim. *Per* the Bench, the period of 120 days is to be calculated from the date of service of such authenticated copy of the written statement along with the counter-claim. The Bench noted that the existing Original Side Rules of the High Court were silent on the issue of filing of a written statement to a counter-claim and issued practice directions till appropriate rules were framed. In terms thereof, after the scrutiny of a counter-claim filed by a defendant in a suit, the Registry is required to serve notice of such counter-claim along with a copy thereof on the plaintiff in the said suit or his Advocate-on-Record within 7 days. Time for filing a written statement by the plaintiff to the counter-claim was directed to be reckoned from the date on which the notice along with a copy of the counter-claim is served by the Registry on the plaintiff or his Advocate, as the case

Supreme Court Reports

may be. Applying these standards, the Bench found no merit in the plaintiffs' appeal. On the maintainability of the appeal, the Bench noted that an appeal is a creature of a statute and the CC Act, being a special statute, was a self-contained code dealing with the specified kinds of commercial disputes. Opining that the right of appeal, when it is provided, is a substantive right, the Bench referred to case law and held that the appeal by the plaintiffs was not maintainable. The appeal was, accordingly, dismissed on both grounds.

10. Learned senior counsel, appearing for the plaintiffs, strenuously contended before us that the stipulated period of 120 days for filing of a written statement by a defendant cannot be applied *mutatis mutandis* to the filing of a written statement by the plaintiff to a counter-claim by the defendant in a commercial suit. He pointed out that, in the case on hand, no time frame was fixed by the learned Judge for the filing of the written statement when the contesting defendants raised their counter-claim and, in the absence of such a time frame being fixed under Order VIII Rule 6A(3) CPC, he argued that the plaintiffs could not be penalised by denying them an opportunity to respond to the said counter-claim. He asserted that the legal position is well settled that a penal provision must be interpreted strictly against the interest of the party seeking to take advantage of it and if an alternative interpretation is permissible, a penal provision must be construed so as to give benefit rather than take it away.
11. On the issue of maintainability of the appeal under Section 13(1A) of the CC Act, the learned senior counsel contended that the language of Section 13(2) thereof, which restricts the scope of the remedy of appeal, could not be interpreted in such a way as to hold that no other order would be appealable other than those provided for in the CC Act itself. Section 13(2), *per* the learned senior counsel, has to be construed to mean that all appeals must be in accordance with the provisions of the Act, notwithstanding anything contained to the contrary in any other law for the time being in force or in the Letters Patent of the High Court. In effect, his submission is that the provision only regulates the procedure in relation to appeals and does not take away the substantive right of appeal. Reliance was placed upon ***Nasima Naqi vs. Todi Tea Company Limited and others***²

A.K. Ghosh & Company and Others v. Biman Bose and Others

to contend that whatever has not been included in a legislation must be treated as having been excluded by implication and it was argued that the intention is clear that the statutory prescription of 120 days for filing a written statement applies only to a defendant in a commercial suit while the filing of a written statement by a plaintiff in such a suit to a defendant's counter-claim is covered by Order VIII Rule 6A(3) CPC.

12. *Per contra*, the learned senior counsel appearing for the contesting defendants asserted that it is not open to the plaintiffs to get over the statutory mandate in relation to completion of pleadings in a commercial suit. He contended that the amended Order VIII CPC put it beyond the pale of doubt that a written statement in response to a counter-claim in a suit governed by the CC Act also has to abide by the time frame fixed therein. He pointed out that Order VIII Rule 6G CPC plainly states that the rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim. In effect, *per* the learned senior counsel, the time frame fixed under Order VIII Rule 1 CPC for the filing of a written statement by the defendant in such a suit would squarely apply to the filing of a written statement by the plaintiff to a counter-claim raised by the defendant in that suit.
13. The issue, therefore, turns squarely upon interpretation of the provisions of Order VIII CPC. Notably, the very concept of a counter-claim being raised by a defendant in a suit was introduced by the Code of Civil Procedure (Amendment) Act, 1976 (Act 104 of 1976), with effect from 01.02.1977, by inserting Rule 6A in Order VIII CPC. This reduced multiplicity of proceedings by allowing a defendant in the suit, if he had an independent claim of his own against the plaintiff, to raise the same in the plaintiff's suit itself, instead of requiring such defendant to institute a separate suit against such plaintiff. Order VIII Rule 6A(1) CPC states that a defendant in a suit may, in addition to his right of pleading a set-off under Order VIII Rule 6 CPC, set up against the plaintiff's claim, by way of a counter-claim, any right or claim in respect of a cause of action accruing to that 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. The *proviso* thereto stipulates that such a counter-claim should not

Supreme Court Reports

exceed the pecuniary limits of the jurisdiction of the Court trying the plaintiff's suit. Order VIII Rule 6A(2) CPC states that such a counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce the final judgment in the same suit, both on the original claim and on the counter-claim. Order VIII Rule 6A(3) CPC provides that 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. Order VIII Rule 6A(4) CPC states that the counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

14. Thus, a counter-claim filed by a defendant in a suit is on par with a plaint, insofar as such defendant's claim is concerned, and the reply thereto filed by the plaintiff is nothing other than his written statement in response thereto. Order VIII Rule 6E CPC is relevant in this regard. It deals with default of a plaintiff in replying to a counter-claim and states that, if the plaintiff makes a default in putting in a reply to the counter-claim made by the defendant, the Court may pronounce judgment against the plaintiff in relation to the counter-claim made against him or make such order in relation to the counter-claim as it thinks fit. Order VIII Rule 6G CPC is also of relevance. Titled 'Rules relating to written statement to apply', it states that the rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim.
15. The time for the filing of a written statement by a defendant in a suit is prescribed by Order VIII Rule 1 CPC. Though Order VIII Rule 1 CPC was amended by Act 104 of 1976 to an extent, the essence of it remained the same. It stated that the defendant in a suit shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence. It was, thus, entirely within the discretion of the Court to fix the time for filing of a written statement by a defendant. Thereafter, on amendment of the provision by Act 46 of 1999, it was envisaged that the defendant shall, at or before the first hearing or within such time as the Court may permit, which shall not be beyond 30 days from the service of summons, present a written statement of his defence. The time frame was, therefore, sought to be severely curtailed by allowing a maximum of 30 days from the service of summons to file a written statement. However, the provision was not given effect to and was substituted by Act 22 of 2002. The Statement of Objects and Reasons

A.K. Ghosh & Company and Others v. Biman Bose and Others

of Act 22 of 2002 reflects that, after Act 46 of 1999 was brought out, a large number of representations were received for and against its enforcement. The Bar Council of India and other Bar Associations asked for a relook to be taken at certain provisions thereof, which caused hardship to litigants.

16. The lawmakers, thereupon, made amendments to the Code of Civil Procedure, 1908, by way of Act 22 of 2002 with effect from 01.07.2002. One such amendment was in relation to the time frame for a defendant to file a written statement. Pursuant thereto, Order VIII Rule 1 CPC required a defendant in a suit to file a written statement ordinarily within 30 days from the date of service of summons but the *proviso* thereto stated that, where the defendant failed to file a written statement within 30 days, he shall be allowed to file the same on such other day as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than 90 days from the date of service of summons. In effect, a defendant normally had to file a written statement within 30 days from the service of summons but the Court's discretion to extend the time to do so, recording reasons therefor, increased to 90 days from 30 days.
17. While so, Order VIII Rule 1 CPC was made more stringent in suits relating to commercial disputes of specified value governed by the CC Act. Section 16 of the CC Act, read with the Schedule thereto, substituted the *proviso* to Order VIII Rule 1 CPC in the context of such suits. It states that where the defendant fails to file a written statement within 30 days from the service of summons, he may be allowed, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, to file a written statement on such other day as may be specified by the Court, but which shall not be later than 120 days from the date of service of summons and on the expiry of 120 days from the date of service of summons, the defendant shall forfeit the right to file a written statement and the Court shall not allow the written statement to be taken on record.
18. In the light of the aforestated *proviso*, if a defendant in a commercial suit fails to file a written statement within 120 days, it is not open to such defendant to put forth a plea, even if genuine, and seek to file a written statement beyond the said period. This was made clear by this Court in **SCG Contracts (India) Private Limited vs.**

Supreme Court Reports

K.S. Chamankar Infrastructure Private Limited and others³, wherein it was held that failure to file a written statement within the extended period of 120 days from the date of service of the summons on the defendant would entail forfeiture of the right to file a written statement and the Court cannot allow a written statement to be taken on record after the said date, even if the defendant was engaged in pursuing an application under Order VII Rule 11 CPC for rejection of the plaint.

19. The question, presently, is whether such a strict time frame would apply to the filing of a written statement by a plaintiff to the counter-claim of the defendant in a commercial suit. We may also take note of Order VIII Rule 9 CPC, which is titled 'Subsequent pleadings'. It states that no pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same. It may be noted that the words 'or counter-claim' were inserted in the above provision by Act 104 of 1976 with effect from 01.02.1977. Thereafter, by way of Act 46 of 1999, it was proposed to altogether omit Order VIII Rule 9 CPC. However, in the light of the representations received, Act 22 of 2002 was brought in, with effect from 01.07.2002, whereby the earlier provision remained but for the addition that the Court's power and discretion to require a written statement or additional written statement from any of the parties was restricted, by limiting the fixing of time therefor to not more than 30 days. Therefore, even prior to the enactment of the CC Act, the endeavour of the lawmakers was to cut down on delays to the extent possible.
20. Significantly, Order VIII Rule 10 CPC categorically states that if a party, from whom a written statement is required under Rule 1 or Rule 9 of Order VIII CPC, fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court is entitled to pronounce judgment against him or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment, a decree shall be drawn up. The *proviso* thereto

A.K. Ghosh & Company and Others v. Biman Bose and Others

has application to commercial suits governed by the CC Act and mandates that no Court shall extend time for filing a written statement, beyond the permissible limit under Order VIII Rule 1 CPC.

21. We find that some of the High Courts have taken a rather liberal view on the issue of delayed filing of a written statement to a defendant's counter-claim. In **Nirottam Sharma vs. Ramkishore and another**⁴, a learned Judge of the Rajasthan High Court held that the Trial Court was duty bound to fix the time under Order VIII Rule 6A(3) CPC for a plaintiff to file a written statement to a counter-claim and if, within that time, the plaintiff failed to file his reply, Order VIII Rule 6E would come into operation. As the Trial Court had not fixed such time in that case, the learned Judge directed it to grant further time to the plaintiff to file his reply to the counter-claim within such time as it may fix.
22. In **CSCO LLC and another vs. Lakshmi Saraswathi Spintex Limited and others**⁵, a learned Judge of the Madras High Court had occasion to consider delay of 563 days in the filing of a written statement to a counter-claim. In that case, the written statement of the defendants was itself filed with a delay of 113 days along with a counter-claim. The application for condonation of that delay was allowed by the Trial Court and stood confirmed in appeal. The matter was then carried to this Court and was pending consideration. At that stage, the plaintiffs in the suit filed a written statement to the counter-claim with a delay of 563 days. The learned Judge referred to **Nirottam Sharma** (*supra*) and observed that, even in the case before him, no time had been fixed for the plaintiffs to file a written statement to the counter-claim and, therefore, it could not be said that the default lay with them. The learned Judge opined that the law laid down in **SCG Contracts (India) Private Limited** (*supra*) would not apply to a written statement to be filed by a plaintiff to the counter-claim made by a defendant and such cases would be governed only by the time fixed by the Court under Order VIII Rule 6A(3) CPC. He, however, hastened to add that, while fixing such a time frame, the outer limit of 120 days fixed for a defendant must be kept in mind. On facts, the learned Judge observed that as the

4 SB Civil WP No. 18024 of 2016, decided on 07.02.2018

5 Appl. No. 4791 of 2021 in CS No. 697 of 2017, decided on 28.01.2022

Supreme Court Reports

matter was pending before this Court in relation to condonation of the delay in the filing of the written statement along with a counter-claim, reasonable cause had been shown by the plaintiffs for filing a written statement to the counter-claim with delay. The learned Judge, accordingly, condoned the delay.

23. In ***Dattaram Krishnanath Pednekar and others vs. Pandurang K. Pednekar and others***⁶, a learned Judge of the Bombay High Court followed the earlier decision of that Court in ***Mrs. Shalini Nunes Mascarenhas vs. Mr. Trevor Nunes***⁷, wherein it was held that filing of a written statement to a counter-claim is not covered by Order VIII Rule 1 CPC but is governed by Order VIII Rule 6A(3) CPC. The learned Judge held that, in terms of the said provision, the Trial Court is expected to fix a time frame for the filing of a written statement to the counter-claim. He opined that Order VIII Rule 6G CPC had no bearing on Order VIII Rule 6A(3) CPC as it only refers to the contents of a written statement and had nothing to do with the time for filing of a written statement in answer to a counter-claim under Order VIII Rule 6A(3) CPC.
24. In ***Indcon Boiler Ltd. vs. Maeda Corporation India and others***⁸, a learned Judge of the Delhi High Court dealt with delay in the filing of a written statement to a counter-claim. The learned Judge observed that, in the case of a counter-claim, the plaintiff may accept the summons in the Court itself when it is presented but the order has to specifically record that the counter-claim has been registered and the service of summons is affected and it is only then that the time for the plaintiff to file a written statement to the counter-claim begins to run. However, on facts, the learned Judge found that the suit had originally been instituted in the High Court and was then transferred to the District Court, but the counter-claim was never registered. At that stage, the CC Act was notified and the plaintiff failed to file a written statement to the counter-claim owing to the prevailing confusion. The learned Judge, accordingly, permitted the plaintiff to file a written statement to the counter-claim of the defendants, subject to payment of costs. This case, therefore, turned on its own individual facts.

6 2010 (7) Mh.L.J.386

7 2009 (2) Goa LR 222

8 CM (M) 767/2019 & CM APPL. 23274/2019, decided on 17.09.2019

A.K. Ghosh & Company and Others v. Biman Bose and Others

25. In **Nasima Naqi** (*supra*), a learned Judge of the Calcutta High Court was dealing with interpretation of the provisions of a rent control legislation. In that context, the learned Judge observed that when a statute mentions only one out of more than one, it necessarily implies that the others are excluded for that purpose. This observation was made in the context of a spouse of an original tenant being included in the substantive provision but being excluded from the second *proviso* thereto, whereupon, the learned Judge held that the interpretation has perforce to be that the spouse has not been conferred the right recognised in the second *proviso*. This decision was affirmed by this Court in **Nasima Naqi vs. Todi Tea Company Limited and others**⁹ and this Court observed that the High Court was correct in observing that this was a case of '*casus omissus*' on the part of the legislature.
26. It would be useful, at this stage, to refer to the Statement of Objects and Reasons of the CC Act to understand why the *proviso* to Order VIII Rule 1 CPC reads as it does in the context of a commercial suit. The Statement records that the proposal to provide for speedy disposal of high value commercial disputes had been under consideration of the Government for some time and that there was a need to provide for an independent mechanism for such early resolution. It was opined that early resolution of commercial disputes would create a positive image to the investor world about an independent and responsive Indian legal system. Upon the Law Commission's recommendations, the Commercial Courts, Commercial Division and Commercial Appellate Division in High Courts Ordinance, 2015, was promulgated on 23.10.2015. Replacing the said Ordinance, the CC Act provided for constitution of Commercial Courts as well as Commercial Divisions and Commercial Appellate Divisions in the High Courts. The CC Act also amended the Code of Civil Procedure, 1908, in its application to Commercial Courts and Commercial Divisions and the amended provisions were to prevail over the existing High Courts' Rules and other provisions of the Code of Civil Procedure, 1908, so as to improve efficiency and reduce delays in disposal of commercial cases.
27. This being the objective of the entire exercise, it would be counterproductive to construe the provisions of Order VIII CPC

Supreme Court Reports

in a manner which would contribute to further delays instead of cutting them down. We may note that Order VIII Rule 1 CPC in its application to a regular suit ordinarily requires the filing of the written statement within 30 days from the date of service of summons and it is only by way of exception that a defendant who fails to do so, is allowed by the *proviso* thereto to file a written statement within a further period, if sufficient cause is shown for the delay and the Court, upon recording reasons in writing, extends the time to do so, but within 90 days from the date of service of summons. The *proviso* to Order VIII Rule 1 CPC was amended in its application to a commercial suit, so as to provide more time to a defendant therein, when compared to a regular suit, but with the caveat that in the event such defendant did not file a written statement within the extended period of 120 days, on payment of the costs imposed, the very right to file a written statement would stand forfeited with no possibility of turning the clock back. The *proviso* to Order VIII Rule 10 CPC emphasizes this by affirming that no Court shall make an order to extend the time provided under Order VIII Rule 1 CPC for filing of the written statement. Logically, similar time constraints have to be applied to filing of a written statement by a plaintiff in such a suit to a counter-claim raised by a defendant therein so as to maintain a strict time schedule to facilitate prompt disposal of such suit. Order VIII Rule 6G CPC achieves that purpose.

28. We, therefore, do not agree with the view taken by the Bombay High Court that the 'rules' referred to in Order VIII Rule 6G CPC only relate to the contents of a written statement to a counter-claim and have nothing to do with the time limit for filing of such written statement. The phrasing of Order VIII Rule 6G does not allow for any such restriction being read into the provision. It unequivocally speaks of application of the rules relating to a written statement by a defendant to a written statement that is to be filed in answer to a counter-claim also. In the context of a commercial suit governed by the CC Act, designed for quicker resolution of commercial disputes, extending the strict temporal requirement relating to the filing of a written statement by a defendant to the filing of a written statement to a counter-claim is rational, as it achieves the same purpose, viz., speedy and timely completion of the pleadings in the suit so as to enable its faster disposal. Therefore, the distinction that was drawn between the filing of a written statement by a defendant in

A.K. Ghosh & Company and Others v. Biman Bose and Others

a commercial suit, in terms of the *proviso* under Order VIII Rule 1 CPC, and a written statement that is to be filed by a plaintiff to such a defendant's counter-claim, by subjecting it only to Order VIII Rule 6A(3) CPC would defeat the very aim of amending the *proviso* to Order VIII Rule 1 CPC in its application to commercial suits.

29. On the same lines, the Madras High Court had held that Order VIII Rule 6A(3) CPC mandates that the Court must specifically pass an order, while taking a counter-claim on file, for summons to be served on the plaintiff or if the plaintiff is represented by counsel, directing such counsel to accept summons on behalf of the plaintiff and fix the time for filing a written statement to the counter-claim. According to the High Court, the clock would start ticking only when the Court fixes the time for filing such a written statement. However, this view of the High Court would mean that, in the event the Court fails to fix such time, the plaintiff is left free to devise his own time schedule to file such a written statement. This, obviously, could not have been the intendment of the statute. As we have noted earlier, amendments to the Code of Civil Procedure, 1908, even prior to the enactment of the CC Act, were directed at truncating the delays in civil proceedings so as to cut short the time taken for resolution of civil disputes. Order VIII Rule 6A(3) CPC, no doubt, enables the Court to fix the time for the plaintiff to file a written statement to a counter-claim, but in the absence of time being fixed thereunder, Rule 6G of Order VIII kicks in and applies the *proviso* to Rule 1 thereof so as to set the temporal outer limit, beyond which such a written statement cannot be filed. To interpret the provisions otherwise would render one or the other unworkable apart from doing violence to the aims of the CC Act.
30. Further, the Madras High Court had also noted that the *proviso* to Order VIII Rule 10 CPC, in its application to a commercial suit under the CC Act, only referred to Order VIII Rule 1 CPC but not Order VIII Rule 9 CPC, though both find mention in Order VIII Rule 10. The High Court opined that, as the *proviso* mentioned Rule 1 and not Rule 9 of Order VIII CPC, the time frame fixed under Rule 9 thereof can be extended by a Court for filing a written statement in appropriate cases and the total bar imposed under Rule 1 would not be applicable to a written statement to a set-off/counter-claim or the written statement/additional written statement, called for by the Court. This construction of the provision is also incorrect. Be it noted that a written statement to a set-off/counter claim does not come within

Supreme Court Reports

the ambit of the 'subsequent pleadings' covered by Order VIII Rule 9 CPC, as it explicitly excepts the filing of a defence to a set-off or counter-claim which, in consequence, would not need the leave of the Court, and states to the effect that no 'other' pleading shall be filed without the leave of the Court. This, obviously, refers to filing of a rejoinder and sur-rejoinder by the parties, which requires prior leave of the Court.

31. Rule 9 of Order VIII CPC also empowers the Court to independently require a written statement from a defendant, who has not filed one, or an additional written statement from a defendant, who has filed one, if the Court deems it necessary. However, this power also came to be controlled when Order VIII Rule 9 CPC was substituted by Act 22 of 2002, specifically adding the maximum time frame of not more than 30 days when the Court itself calls for a written statement or additional written statement. The scheme and structure of the Code of Civil Procedure, 1908, as is evident from the many amendments that it has undergone, is aimed at simplifying processes by fixing time frames for necessary steps to be taken. Such time frames have been made tighter in the context of commercial suits governed by the CC Act and any interpretation to the contrary would defeat the very purpose of that enactment.
32. Read together, the scheme of the provisions is that the Court may, in the first instance, fix a time frame for filing of a written statement to a counter-claim, under Order VIII Rule 6A(3) CPC. Such time may be extended, by way of an application at the behest of the plaintiff under the *proviso* to Order VIII Rule 1 CPC read with Rule 6G thereof, or by the Court itself under Order VIII Rule 9 CPC. However, in the former case, the discretion of the Court to grant more time, subject to recording of reasons and payment of costs, would extend to a maximum of 120 days from the date of service of the summons/receipt of the counter-claim, but in the latter case, when the Court itself calls for a written statement without the party seeking to do so, the time to be fixed by the Court therefor is shorter, i.e., just 30 days, within the permissible outer limit of 120 days from the date of service of the summons. Order VIII Rule 10 CPC speaks of the consequences that would follow if these time lines are not abided by and honoured, in terms of pronouncement of a judgment followed by a decree. The *proviso* thereto merely puts emphasis on the point that the Court cannot extend the time under Rule 1 of

A.K. Ghosh & Company and Others v. Biman Bose and Others

Order VIII CPC beyond the permissible limit in a commercial suit governed by the CC Act. This, however, does not mean that the time frame fixed under Order VIII Rule 9 CPC stands diluted, as the adverse consequences that are to follow upon breach thereof still remain intact in Order VIII Rule 10 CPC.

33. Viewed thus, we answer the question posed in the affirmative. A plaintiff in a commercial suit, governed by the CC Act, is bound by the mandate of the *proviso* to Order VIII Rule 1 CPC, as applicable to a commercial suit, and must file a written statement to a counter-claim by a defendant therein, ordinarily within 30 days from the date of service of summons or receipt of the counter-claim, and in the event a plaintiff fails to file such a written statement within that time but offers sufficient cause for the delay, the Court may extend the time to do so, for reasons to be recorded in writing and upon payment of appropriate costs, but not beyond 120 days from the date of service of summons upon the plaintiff/receipt of the counter-claim by the plaintiff.
34. As regards the issue of maintainability of the appeal filed before the Division Bench of the High Court, we may note that Section 13 in Chapter IV of the CC Act deals with appeals. Section 13(1) states that 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 60 days from the date of the judgment or order. Section 13(1A) provides that any person aggrieved by the judgment or order of a Commercial Court at the level of the District Judge, exercising original civil jurisdiction or, as the case may be, a Commercial Division of a High Court, may appeal to the Commercial Appellate Division of that High Court within a similar time frame. However, the *proviso* to Section 13(1A) stipulates 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, as amended by the CC Act, and Section 37 of the Arbitration and Conciliation Act, 1996. Section 13(2), starting with a *non-obstante* clause, emphasises this point. It states that, notwithstanding anything contained in any other law for the time being in force or the 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 the CC Act.

Supreme Court Reports

35. Dealing with the scheme of Section 13 in **BGS SGS SOMA JV vs. NHPC Limited**¹⁰, a 3-Judge Bench of this Court observed that Section 13(1) of the CC Act must be construed in accordance with the object sought to be achieved by the said Act and construction of Section 13 which would lead to further delay, instead of an expeditious enforcement of a foreign arbitral award must, therefore, be eschewed. It was further observed that there is no independent right of appeal created under Section 13(1) of the CC Act, which merely provides the forum for filing the appeal and parameters of Section 37 of the Arbitration and Conciliation Act, 1996, alone had to be looked at in order to determine whether the appeal in that case was maintainable. The Bench held that an appeal is a creature of statute and must be found within the four corners of the statute.
36. In **Kandla Export Corporation and another vs. OCI Corporation and another**¹¹, this Court considered the question as to whether an appeal which is not maintainable under Section 50 of the Arbitration and Conciliation Act, 1996, would nonetheless be maintainable under Section 13(1) of the CC Act. Answering this question in the negative, this Court held that Section 13(1) of the CC Act is in two parts - the main provision, which provides for an appeal from a judgment, order and decree of the Commercial Division of the High Court and, to this main provision, an exception that has been carved out by the *proviso*. We may note that, in this case, the unamended Section 13 of the CC Act, which was then titled 'The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015', was under consideration. Section 13, as it then stood, read as under:-

“(1) Any person aggrieved by the decision of the Commercial Court or 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 judgment or order, as the case may be:

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

10 (2020) 4 SCC 234

11 (2018) 14 SCC 715

A.K. Ghosh & Company and Others v. Biman Bose and Others

Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).”

As the *proviso*, which remains unchanged, restricted the appellate jurisdiction under Section 13 of the CC Act to only those orders that are specifically enumerated under Order XLIII CPC and Section 37 of the Arbitration and Conciliation Act, 1996, this Court held that orders that were not specifically enumerated thereunder would not be amenable to appeal. This Court opined that where a special Act sets out a self-contained code, applicability of the general law would be impliedly excluded.

37. In the light of the above statutory scheme and the decisions of this Court referred to hereinabove, it is clear that an appeal would lie under Section 13(1A) only if the order sought to be appealed against finds mention either in Order XLIII CPC or Section 37 of the Arbitration and Conciliation Act, 1996. As an order passed under Order VIII CPC is not appealable under Order XLIII CPC, the question of the plaintiffs maintaining an appeal against the order of the learned Judge denying them leave to file a belated written statement to the counter-claim raised by the contesting defendants does not arise. Thus, the Division Bench committed no error in holding that the appeal, apart from being devoid of merit, was not even maintainable.
38. We, therefore, find that the learned Judge and the Division Bench of the High Court were fully justified in rejecting the plea of the plaintiffs to grant them leave to file their written statement to the counter-claim raised by the contesting defendants, notwithstanding the long delay on their part.

The appeals are, accordingly, dismissed.

Interim order dated 23.05.2025 shall stand vacated.

Pending application(s), if any, shall also stand dismissed.

Parties shall bear their own costs.

Result of the case: Appeals dismissed.