

In the High Court at Calcutta
Commercial Division
Original Side

Judgment (2)

PRESENT :
THE HON'BLE JUSTICE ANIRUDDHA ROY

**IA No. GA-COM/7/2025
[Old No. CS/179/2021]
In CS-COM/306/2024**

**EDEN CONSULTANCY SERVICES
PVT LTD
VS
KERALA STATE ELECTRONICS
DEVELOPMENT CORPORATION
LTD AND ORS**

For the plaintiff	: Mr. Rajarshi Dutta, Adv. Mr. Sarbajit Mukherjee, Adv. Mr. Deepak Jain, ADv. Mr. Jishnu Dutta, Adv.
For the defendant no.1	: Mr. Kushal Chatterjee, Adv. Mr. Subhashis Mitra, Adv. Mr. Shibjit Mitra, Adv.
For the defendant no.2	: Mr. Debanik Banerjee, Adv. Mr. Steven S. Biswas, Adv.
For the defendant no.3	: Mr. Abir Lal Chakraborty, Adv. Mr. Arijit Mohinder, Adv.

Heard on : November 13, 2025

Judgment on : November 13, 2025

ANIRUDDHA ROY, J :

FACTS :

- 1.** This is an application filed by the defendant no.1, *inter alia*, praying for the following reliefs :

“a) Grant the kind leave of this Hon’ble Court to the Defendant No.1 to file rejoinder and written statement in response to the written statement cum counter-claim filed by Defendant No.3;

b) Direct the Filing Department of the Original Side to accept the said rejoinder and written statement of Defendant No.1;

c) Pass such further or other order(s) as may be deemed fit and proper in the facts and circumstances of the case.”
- 2.** Learned Counsel appearing for the defendant no.1, Mr. Kushal Chatterjee, submits that he is a co-defendant in the suit along with other defendants. Defendant no.3 has already used a written statement in which a counter-claim is there. Defendant no.1 prays for leave to file a rejoinder and written statement in response to such counter-claim filed by the defendant no.3, as those are diverted against it.
- 3.** Plaintiff has filed the suit against five defendants. The fifth defendant is the proforma defendant. The present applicant is the first defendant.

SUBMISSIONS :

4. Since the third defendant has already filed written statement containing the counter-claim, Mr. Kushal Chatterjee, learned Counsel appearing for the first defendant/applicant refers to provision laid down under **Order VIII Rule 1 of the Code of Civil Procedure, 1908 (for short “CPC”)** and submits that provisions are made for filing the counter-claim by the defendant. Specifically relying upon **Rule 9** under **Order VIII of CPC**, Mr. Chatterjee submits that no pleadings subsequent to the written statement by the defendant other than by way of defence to set off or counter-claim shall be presented except by the leave of the Court but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time not more than 30 days for presenting the same.
5. According to Mr. Chatterjee, learned Counsel, expression **“parties”** used to under **Rule 9** includes all the parties to the suit. He submits even if a co-defendant raises a counter-claim which is directed against another defendant, such another defendant shall be permitted to use additional written statement as against the counter-claim which is directed against it. In support, he has placed reliance upon the following judgments :
(a) In the matter of : Chandra Kishore vs. Babulal Agarwala and Others reported at **AIR (36) 1949 Orissa 77, (b) In the**

matter of : Noorul Hassan vs. Nathakpam Indrajit Singh and Others reported at **(2024) 9 Supreme Court Cases 353.**

6. In the light of the above submissions, Mr. Chatterjee, learned Counsel prays that the first defendant should be allowed to file its additional written statement in response to the alleged counter-claim raised by the defendant no.3.
7. Per contra, Mr. Rajarshi Dutta, learned Counsel with Mr. Sarbajit Mukherjee, learned Counsel appearing for the plaintiff referring to the various provisions from Order VIII of CPC submits that the expression '**counter claim**' is well defined in the Code. It is only between the plaintiff and defendant/defendants. If a defendant in its written statement submits a counter claim in answer to the plaint, only then the plaintiff would have an opportunity to deal with the counter claim by filing an additional written statement.
8. Very specifically relying upon the **Rules 6A to 6G** and then **Rule 9 to Order VIII of CPC** Mr. Rajarshi Dutta, learned Counsel submits that the expression '**parties**' used under Rule 6 to Order VIII should be understood and read in the light of the expression counter claim as explained and defined under Rule 6A itself and not beyond that. Therefore, when a counter claim has been raised by a defendant in answer to plaint, it is the plaintiff only who has a right to file additional written statement.

A co-defendant has no right to file additional written statement against a counter claim, if raised by another defendant.

9. While dealing with the judgments cited on behalf of the first defendant/applicant Mr. Rajarshi Dutta, learned Counsel submits as follows:-

a) ***In the matter of: Chandra Kishore (Supra)*** it was a case where the proceeding emanates for addition of parties after the plaint was allowed to be amended and ultimately the written statement was allowed to be amended by the defendant after amendment of the plaint. This is not the case in hand.

b) ***In the matter of: Noorul Hassan (Supra)*** this was an election petition. The law is well settled that an election petition is not instituted through a plaint but by way of a petition in terms of the statutory form prescribed under the relevant statute and rules. However, the procedure for hearing of such election petition, as adopted under the statute and the connected rules, the same should be heard following the procedure of hearing for a trial of suit. In the instant case a simpliciter plaint has been filed and the defendant no.3 has raised its counter claim through its written statement.

10. Therefore, the ratio in the said judgments have no application.

11. Mr. Rajarshi Dutta, learned Counsel further submits that a co-defendant in law is not permitted to use an additional written statement against a counter claim raised by another defendant in the same suit and there cannot be any scope for trial of the claim and counter claim in between the defendants.

12. In the light of the above, Mr. Rajarshi Dutta, learned Counsel submits that this application is totally frivolous and without any merit and should be dismissed.

DECISION :

13. After hearing the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that, the plaintiff has filed the plaint. The reliefs, nature or the subject matter of the plaint is not relevant to be discussed for the purpose of adjudication of the instant application. The admitted fact is also that the defendant no.3 has filed its written statement lodging a counter claim. The first defendant has already filed its written statement against the plaint and now seeks to file an additional written statement against the counter-claim of defendant No. 3 and praying for leave through the instant application.

14. Rule 6-A of Order VIII of CPC deals with the provisions for counter claim. It says that a defendant in a suit may, in addition to his right of pleading, 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. Therefore, the expression '**counter claim**' is restricted by the statute in between the plaintiff and the defendant. The Sub-rule (2) to Rule 6A states that 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. The rule further provides that the plaintiff shall be at liberty to file a written statement in answer to the counter claim of the defendant and the counter claim shall be treated as a plaint. Where a defendant seeks to rely upon any ground as supporting a right of counter claim, he shall, in his written statement, states specifically that he does so by way of counter claim. The Rule further provides that where a defendant sets off a counter claim the plaintiff may have a choice either the same to be tried as a counter claim or as an independent suit against the plaintiff. In the event, a case in which the defendant sets off a counter claim, the suit of the plaintiff is, discontinued or dismissed, the counter claim lodged by the defendant be nevertheless be proved against the plaintiff. If the plaintiff makes 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 it. All these provisions laid down

under Order VIII of CPC unambiguously and without any doubt demonstrate that a **counter claim** would only lie in between the **plaintiff and defendant and not in between the defendants.**

15. The principle of ***ejusdem generis*** is a Latin term meaning “*of the same kind or nature*”. It is a rule of statutory interpretation that helps courts to understand the meaning of general words in a statute when they are preceded by specific words. Essentially, it says that when specific words are followed by general words, the general words should be interpreted to include only things of the same type as that of the specific words. General words should come after specific words. The legislature never intends to give a wider meaning for the general words. The general words used subsequently in a statute should be interpreted in a way and in the light of similar to the specific words used previously on the same context.
16. The law is well settled that, the previous provisions of the statute when connected with the later part of it, the later part to be read by applying the doctrine of ***ejusdem generis***. Applying the said doctrine, this Court is of the considered view that, when the expression ‘**parties**’ used under **Rule 9(2)** to **Order VIII**, insofar as counter claim is concerned, has to be read, construed and understood between the plaintiff and the defendant and not between the defendants.

17. The facts ***In the matter of: Chandra Kishore (Supra)*** is totally different. The fact of addition of parties or the amendment of written statement which were there are not the facts in the instant case. In the instant case the applicant/defendant no.1 simply wants to file an additional written statement in reply to the alleged counter claim raised by the defendant no.3. Therefore, the ratio decided in the said judgment has no application in the facts of this case.

18. ***In the matter of: Noorul Hassan (Supra)***, it was an election petition in which the Hon'ble Court had observed as under:-

“25. Though the High Court while dealing with an election petition exercises powers under CPC, those powers are subject to the provisions of the 1951 Act and of any Rules made thereunder. In consequence, the general power of amendment of a pleading or of grant of leave to file replication, as is otherwise available to a court under Order 6 Rule 17 and Order 8 Rule 9 CPC, is limited by the provisions of the 1951 Act and the Rules made thereunder. For example, subsection (5) of Section 86 of the 1951 Act provides that the High Court may allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may, in its opinion, be necessary for ensuring a fair and effective trial of the petition, but it shall not allow any amendment of the petition which will have

the effect of introducing particulars of a corrupt practice not previously alleged in the petition."

- 19.** From the above quoted paragraph it appears that, the procedure for trial in an election petition is prescribed under the relevant statute. Though the procedure adopted is that of hearing of a suit but the procedure for trial of an election petition cannot be equated with of procedure for trial of a regular constituted civil suit, as in the instant case, where defendants are permitted to file written statement with counter claim, if any. Therefore, the said judgment ***In the matter of: Noorul Hassan (Supra)*** and the ratio decided therein would not apply in the facts of this case.
- 20.** In the event the contention of the applicant is accepted and the defendant no.1 is permitted to use an additional written statement in response to a counter claim lodged by the defendant no.3, there will be a **trial within the trial in a single suit in between the defendants**, which is not permitted in law.
- 21.** In view of the forgoing reasons and discussions, this Court is of the considered view that the instant application is totally frivolous, harassing and a ploy adopting a dilatory tactics to delay the trial of the commercial suit, if possible.

22. Accordingly, the instant application **IA No. GA-COM/7/2025** being devoid of any merit stands **dismissed** with **costs** assessed at **Rs. 10,000/-** to be paid by the defendant No.1 in favour of the **West Bengal State Legal Services Authority** positively within **two weeks** from date and shall produce a copy of the money receipt before the learned Advocate-on-record for the plaintiff.

(ANIRUDDHA ROY, J.)

RS/Sbghosh/mg