



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 30TH DAY OF JUNE 2026 / 9TH ASHADHA, 1948

CRP NO. 437 OF 2025

AGAINST THE ORDER DATED 10.09.2025 IN EA NO.2 OF 2025 IN
EP 16 OF 2025 IN AP No.762 OF 2022 OF SUB COURT, PATHANAMTHITTA

REVISION PETITIONERS/PETITIONERS 1 & 2/JUDGMENT DEBTORS 1 & 2:

- 1 KARTHIK EXPORTS
THUVAYOOR NORTH, ANTHICHIRA, MANAKALA P.O,
ADOOR, PATHANAMTHITTA, KERALA- PIN- 691 551,
REPRESENTED BY ITS AUTHORISED SIGNATORY:
S. VIJAYAN@ VIJAYAN THADATHIL SADANANDAN,
AGED 55 YEARS, S/O THADATHIL SADANANDAN,
EP/VIII/558 B, MANAKKALA,
ANTHICHIRA,
THUVAYOOR NORTH,
PATHANAMTHITTA DISTRICT
- 2 S. VIJAYAN @ VIJAYAN THADATHIL SADANANDAN
AGED 55 YEARS
S/O THADATHIL SADANANDAN,
EP/VIII/558 B, MANAKKALA, ANTHICHIRA,
THUVAYOOR NORTH, PATHANAMTHITTA DISTRICT,
PIN - 691551

BY ADVS.
SRI.JACOB P.ALEX
SRI.JOSEPH P.ALEX
SHRI.MANU SANKAR P.
SHRI.AMAL AMIR ALI



RESPONDENTS/RESPONDENT & 3RD PETITIONER/DECREE HOLDER & 3RD
JUDGMENT DEBTOR:

- 1 KRISHNA KUMAR AGARWAL
S/O. SURESH CHANDRA AGARWAL,
ROOM NO. 105, 6, B.T.M SARANI, KOLKATA,
WEST BENGAL- 700001 (PREVIOUSLY KNOWN AS 6,
BRABOURNE ROAD,
KOLKATA, WEST BENGAL), PIN - 700 001.

- 2 PREETHA VIJAYAN
W/O. S. VIJAYAN@ VIJAYAN THADATHIL SADANANDAN,
EP/VIII/558 B, MANAKKALA,
ANTHICHIRA, THUVAYOOR NORTH,
PATHANAMTHITTA DISTRICT,
PIN - 691 551

BY ADVS

SHRI. AAMIR SOHRAB M. M.

SRI DEBRAJ SAHU (Instructed By Adv.Sri Aamir Sohrab M. M.)

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 09.03.2026, THE COURT ON 30.06.2026 DELIVERED THE FOLLOWING:



T.R. RAVI, J.

CRP No.437 of 2025

Dated this the 30th day of June, 2026

JUDGMENT

Heard Sri Jacob P. Alex on behalf of the petitioners and Sri Debraj Sahu, instructed by Adv. Sri Aamir Sohrab M. M., on behalf of the respondents.

2. An arbitration was held between M/s. D. Monalisa Impex, the 1st petitioner and the 1st respondent. Annexure 1 is the award. As per the award, the 1st respondent was held liable to pay an amount of ₹ 1,30,34,234/- to the claimant along with interest at the rate of 8% per annum from 22.05.2019 till the recovery of the amount. It was also held that the 1st respondent is liable to pay an amount of ₹1,33,68,445/- to the 2nd respondent along with interest at the rate of 8% per annum from 22.05.2019 till the date of recovery. In this revision petition, we are concerned with the award passed against the 1st respondent in favour of the 2nd respondent. The 1st respondent herein filed an execution petition, EP No.16 of 2025 before the Commercial Court, Pathanamthitta, against the



petitioners and the 2nd respondent, who is the wife of the 2nd petitioner herein. This Civil Revision Petition is filed challenging the order passed in EA No. 2 of 2025 in EP No.16 of 2025 in AP No.762 of 2022 by the Sub Court, Pathanamthitta. The execution application was filed by petitioners along with the 2nd respondent under Section 47 read Section 151 of the Code of Civil Procedure. According to the petitioners, the execution petition is not maintainable since the arbitral award does not state that the 1st petitioner is a partnership firm and that the 2nd petitioner and the 2nd respondent were not parties to the arbitration. It is contended that the 1st petitioner has filed A.P.No.762 of 2022 before the Calcutta High Court challenging the award under Section 34 of the Arbitration and Conciliation Act, 1996 ('the 1996 Act' for short) which is pending. The main contention raised in EA No.2 of 2025 is that the respondent (1st respondent herein) cannot maintain a counter claim against a co-respondent and hence the award based on such a counter claim is *void ab initio*. The Commercial Court in the impugned order held that the counter claim was maintainable and hence the decree was executable. It was found that in the arbitration proceedings it is



admitted that the 1st petitioner is a partnership firm. The court found that as per the provisions contained in Order XXI Rule 50(1)(b), the award which is deemed to be a decree under Section 36 of the Act can be executed against the 2nd judgment debtor in addition to the firm, Karthik Exports. The court also found that the 2nd judgment debtor had participated in the proceedings as a partner on behalf of the partnership firm. Since the 3rd judgment debtor had not entered appearance in the arbitration proceedings, it was held that the award was not enforceable against the third judgment-debtor.

3. The Civil Revision Petition has been filed contending that the execution court went wrong in holding that the execution petition is maintainable. According to the revision petitioner, since the 2nd petitioner and the 2nd respondent are not parties to the arbitration proceedings, the award cannot be enforced against them as they do not fall within the definition of the term 'judgment debtors'. Another contention raised is that the Arbitral Tribunal lacked inherent jurisdiction to entertain a counter claim by one respondent against a co-respondent. According to the counsel for the petitioners, a counter claim can be directed only against the original claimant and



any attempt by a respondent to file a counter claim against a co-respondent is a procedural impropriety since a counter claim is a reciprocal action in response to the claimants' claim. Reference is made to the definition of 'counter claim' in Blacks Law Dictionary 9th Edition. The counsel placed reliance on Section 23(2A) of the 1996 Act to submit that the provision does not expressly permit the filing of a counter claim by one respondent against a co-respondent within the arbitral proceedings and since there is no specific provision, the general principle laid down in Order VIII Rule 6A of the Code of Civil Procedure has to be followed, which specifically says that a defendant may, by way of a counter claim, against the claim of the plaintiff set up any right or claim in respect of a cause of action accruing to the defendant against the plaintiff. It is submitted that the provision does not speak of a counter claim by a defendant against a co-defendant. It is further submitted that the 1st judgment debtor had never consented to arbitrate the disputes with the 1st respondent and the Arbitrator could not have assumed jurisdiction to decide an *inter se* dispute between the co-respondents.

4. The counsel for the respondents submitted that the 1st



respondent was a commission agent. It is submitted that in the award in paragraph 10, the question whether a counter claim filed by the 2nd respondent in the arbitration proceedings can be adjudicated was considered. The Arbitrator noted that an order has been passed as early as 01.11.2021 holding that the counter claim filed by the 2nd respondent against the 1st respondent is maintainable. It is stated that the said finding was after a prolonged hearing and the arguments which were recorded on 8th, 9th and 11th sittings of the Tribunal. It is further submitted that an application under Section 34 of the 1996 Act challenging the award has been filed before the Calcutta High Court, but no interim orders have been granted by the court and that the very same argument have been raised before the Calcutta High Court in the said application. The counsel further submitted that the application was filed along with an affidavit by the counsel, which should not have been accepted.

5. The counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in **Rajul Manoj Shah alias Rajeshwari Rasiklal Sheth v. Kiranbhai Shakrabhai Patel & Anr. [AIR 2025 SC 4284]** to submit that a 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 the defendant against the plaintiff. The Hon'ble Supreme Court had referred to the judgment in **Rohit Singh v. State of Bihar [(2006) 12 SCC 734]** wherein it was held that a counter claim can be made against a co-defendant in a suit, but it cannot be directed solely against the co-defendant and the litigation cannot be converted into some sort of an inter-pleader suit. Counsel also relied on the decision in **Electrosteel Steel Ltd. vs. Ispath Carrier Pvt. Ltd. [2025 SCC OnLine SC 829]**. In the said judgment, the Hon'ble Supreme Court held that an objection to execution of an award can be raised under Section 47 of the Code of Civil Procedure even in the absence of an application under Section 34 of the 1996 Act. It is hence argued that Commercial Court should have entertained the objection under Section 47 CPC despite the fact that a Section 34 application was pending before the Tribunal.

6. As regards the contention raised by the counsel for the respondent that the application was filed along with the counsel's affidavit, it is submitted that thereafter the party had also filed an affidavit and the same had been accepted by the execution court.



Reliance is placed on the judgment in **Udeshankar Priya V. Ram Kalevar Prasad Singh and Others [(2006) 1 SCC 75 para. 17]** to submit that a defect can be cured. Another contention raised is on the basis of the judgment in **Arif Azim Co. Ltd. V. Aptech Ltd. [(2024) 5 SCC 313]**. In paragraphs 85 and 86 of the said judgment, the Hon'ble Supreme Court has held that proceedings under the 1996 Act in relation to a dispute, will commence when a notice invoking arbitration is sent by the claimant to the other party. It is submitted that in the letter from the respondent to the petitioner sent on 22.05.2019, the reference made by the applicant in the arbitration reference is made to a different legal entity and not to the 1st petitioner. In A.R.No.8 of 2025, a learned Judge of this Court had considered the effect of Section 21 of the Act and held that even though no particular form or ingredients are prescribed for a request under Section 21 of the Act, it must contain minimum particulars of the particular dispute as mentioned in Section 22. It is hence contended that as far as the 2nd respondent in the arbitration proceedings is concerned, there was no request under Section 21 from the 1st respondent and hence, no proceedings can be validly



initiated.

7. In **Rajul Manoj Shah (supra)**, the Hon'ble Supreme Court considered the question whether a counter claim can be entertained against a co-defendant. In the said case, the appellant before the Hon'ble Supreme Court had filed a suit for declaration that her sister-in-law had no right to transfer or deal with a property which was jointly held, without her consent and to declare that an agreement to sell entered into on 21.10.2011 was null and void. The defendant in the suit moved an application seeking to amend the written statement by adding a counter claim and for a direction to the second respondent to accept the remaining consideration and execute a sale deed for the undivided share in furtherance of the agreement to sell. The trial court dismissed the application on the ground of delay and finding that it was an abuse of the process to file such an application after issues were framed. The trial Court held that the counter claim is not maintainable against the co-defendant. In a Special Civil Application before the High Court, the High Court of Gujarat allowed the applications filed by the defendant and permitted him to file the counter claim. The said order was challenged in the



civil appeal. The Hon'ble Supreme Court in paragraphs 20 and 21 of the judgment observed as follows:

20. We may note that any contrary interpretation would lead to unnecessary curtailment of the right of a defendant to file counterclaim. This Court needs to recognise the practical difficulties faced by the litigants across the country. Attaining the laudable goal of speedy justice itself cannot be the only end, rather effective justice wherein adequate opportunity is provided to all the parties, need to be recognised as well (refer to Salem Advocate Bar Assn. case [Salem Advocate Bar Assn.(2) v. Union of India, (2005) 6 SCC 344 : AIR 2005 SC 3353]).

21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- (i) Period of delay
- (ii) Prescribed limitation period for the cause of action pleaded.
- (iii) Reason for the delay.



- (iv) Defendant's assertion of his right.
- (v) Similarity of cause of action between the main suit and the counterclaim.
- (vi) Cost of fresh litigation.
- (vii) Injustice and abuse of process.
- (viii) Prejudice to the opposite party.
- (ix) And facts and circumstances of each case.
- (x) In any case, not after framing of the issues.

8. The court went on to hold that the issue is no longer *res integra* and the defendant was not entitled to raise the prayer of specific performance by way of a counter affidavit against a co-defendant. The Court had placed reliance on the earlier judgment of the Hon'ble Supreme Court in **Rohit Singh (supra)**.

9. In **Electrosteel (supra)**, the Hon'ble Supreme Court held that a plea of nullity of an arbitral award can be raised in a proceeding under Section 47 of the Code of Civil Procedure. In paragraph 49 of the judgment, the Hon'ble Supreme Court held that objection to execution of an award under Section 47 of the Code of Civil Procedure is not dependent or contingent upon filing a petition under Section 34 of the 1996 Act. The court found that the High Court in that case was not justified in taking the view that since the appellant did not file a petition under Section 34 of the 1996 Act, it



was precluded from filing an application before the executing court to declare the award as void and hence non-executable. In the case on hand, admittedly, a Section 34 application is pending before the Calcutta High Court. On the contention that the application was filed with a supporting affidavit of the counsel, it is submitted that in the light of the judgment in **Uday Shankar Triyar V. Ram Kalewar Prasad Singh and Ors. [(2006) 1 SCC 75]** it was a curable defect and has been cured by incorporating an affidavit by the party.

10. In **Arif Azim Co. Ltd. (supra)**, the Hon'ble Supreme Court held that as provided in Section 21 of the Act, the arbitral proceedings in relation to a dispute commence when a notice invoking arbitration is sent by the claimant to the other party. Relying on the above judgment, it is submitted that no arbitration could have commenced without such a notice.

11. The counsel for the respondents contended that it was a case where the parties were referred for arbitration pursuant to an order passed by the High Court of Calcutta. Annexure R1(F) is the order passed by the High Court of Calcutta, whereby the parties were referred to the agreed Arbitrator Mr.Swarnendu Ghosh, thereby



substituting the earlier Arbitrator. The counsel pointed out that in the petition filed before the Calcutta High Court seeking to cancel the mandate of the Arbitrator, a specific contention was taken regarding entertainment of a counter claim against a co-defendant. It is seen from Annexure R1(F) that the order was issued based on the agreement arrived at between the parties, to substantiate the Arbitration and to continue the arbitration from the stage which was reached by the outgoing Arbitrator. The counsel relied on the judgment in **State of Goa V. Praveen Enterprises [(2012) 12 SCC 581]** to submit that at the time of passing the order under Section 14, the counter claim was already on record and hence reference of all disputes will include reference of the counter claim also. The counsel relied on Section 2(9) to submit that a claim includes a counter claim. It is hence submitted that even a counter claim can be treated as a claim under Section 2(9). On the question of nullity of the award, the counsel argued that an improper or irregular exercise of jurisdiction will not make an award a nullity, unlike a case where the exercise itself was without jurisdiction. It is submitted that as far as the parties are concerned, they had



submitted to the arbitration and agreed on a decision on the counter claim also and even if it is erroneous, as between the parties, it is conclusive. The submission is made on the basis of the judgment in **Hriday Nath Roy V. Ram Chandra Barna Sarma [1920 SCC onLine Cal.85]**. In **Rahul S. Shah V. Jinendra Kumar Gandhi and Others [(2021) 6 SCC 418]**, the Hon'ble Supreme Court held that the court exercising the jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. The court held that the court should refrain from entertaining any such application that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of the suit if due diligence was exercised by the applicant.

12. In the impugned order, the execution court has considered the above contentions. The execution court relied on paragraph 11 of the judgment in **Praveen Enterprises (supra)**, which reads as follows.

“11. Reference to arbitration can be in respect of all disputes between the parties or all disputes regarding a



contract or in respect of specific enumerated disputes. Where "all disputes" are referred, the arbitrator has the jurisdiction to decide all disputes raised in the pleadings (both claims and counterclaims) subject to any limitations placed by the arbitration agreement. Where the arbitration agreement provides that all disputes shall be settled by arbitration but excludes certain matters from arbitration, then, the arbitrator will exclude the excepted matter and decide only those disputes which are arbitrable. But where the reference to the arbitrator is to decide specific disputes enumerated by the parties/court/appointing authority, the arbitrator's jurisdiction is circumscribed by the specific reference and the arbitrator can decide only those specific disputes."

13. The court proceeded to hold that there is no bar against the Arbitrator deciding on the counter claim. Having regard to Section 23 read with Section 2(9) of the Act, the court also found that the argument of the judgment debtors that the award passed without serving notice under Section 21 is unenforceable and nullity cannot hence be accepted since it was a case where the dispute had been referred for arbitration. In **Rajul Manoj Shah (supra)**, the Hon'ble Supreme Court was considering the question of a counter claim under Order VIII Rule 6A of the Code of Civil Procedure in a regular suit and not the case of a counter claim in an arbitration. In



Praveen Enterprises (supra), the court was considering a counter claim in an arbitration proceedings and the court held that a counter claim is also one which can be considered by the Arbitrator. However, in the said decision, the question that was considered was not regarding a counter claim between co-defendants.

14. Annexure R1(E) is the agreement which contains the arbitration clause and it is an agreement which is executed between the partnership firm M/s.Karthik Exports, who is the 1st revision petitioner represented by its managing partner, who is referred to as the buyer, M/s.Monalisa Impex who is the claimant in the arbitration claim being the seller under the agreement and the 1st party to the agreement and 1st respondent, who is the 2nd party to the agreement.

15. Annexure R1(D) is the order passed by Sole Arbitrator Mr.Swarnendu Ghosh on 01.11.2021, on an application made by the 1st revision petitioner wherein a specific contention was taken that no counter claim can be made by a respondent solely against another respondent. The Arbitrator went into the question and found that the arbitration agreement is a tripartite agreement, wherein all three



parties have independent obligations as against each other and allegations are made by the 1st respondent as against the 2nd respondent in the statement of defence. The relevant portion of the order reads thus:

“With regard to Respondent No.2 whether is entitled to making any counter claim as against the Respondent No.1 only, I think that the agreement dated 29th March, 2019 involved in the instant case is a tripartite agreement wherein all the three parties have independent obligations as against each other. There are allegations made by the Respondent No.1 as against the Respondent No.2 in the Statement of Defence. Clause 11.21 confers an obligation on the Respondent No.1 to make payment of commission to the Respondent No.2. It is on the basis of non-payment of this commission that the Respondent No.2 has claimed damages as against the Respondent No.1 in the counter claim. I am also of the view that Section 23 (2A) of the Arbitration and Conciliation Act, 1996 is more expansive by nature than that of the Order 8, Rule 6A of the Code of Civil Procedure.. The Order 8, Rule 6A specifically mentions about a counter claim against the claim of the plaintiff, accruing to the defendant against the plaintiff, whereas Section 23 (2A) does not specifically say so. Moreover, Section 23 (3) specifically mentions that either party may amend or supplement his claim of defence during the course of arbitral proceedings. I feel, in the instant case the Respondent No.2 in support of his case has submitted the counter claim which falls within the scope of the



arbitration agreement. Furthermore, the arbitration agreement itself encompasses all disputes and differences between parties. I feel that for the above reasons, it is within the jurisdiction of the tribunal to entertain the counter claim made by the Respondent No.2 as against the Respondent No.1. I have derived support from the observations made in the judgment reported in 2012 (Vol.12) SCC, page 581 on this point.”

16. Annexure R1(A) is the agreement between the parties. The agreement refers to the *inter se* obligations of all the parties including as between the second party and the third party (the 1st respondent and 1st petitioner herein). Paragraph 11.14 which is the arbitration clause reads thus:

“11.14 It is mutually agreed and accepted by all the parties herein, that all disputes and differences, if any in respect of matters relating to and/or concerning and/or arising out and/or touching the subject matter of the contract shall be held in Kolkata and the same shall be referred to the sole Arbitration of Mr. Padam Kumar Agarwal, Chatterjee International Center, 33A, Jawaharlal Nehru Road, 17th Floor Room no:11, Kolkata – 700071, West Bengal, India in terms of the Arbitration & Conciliation (Amendment) Act, 2015 as amended from time to time. The Learned Arbitrator shall have summary powers and shall be entitled to make a non-speaking Award. The award made and published by the Ld. Arbitrator shall be final and binding on the parties herein. The Arbitration proceeding shall be



governed, in accordance with the Laws of India which shall be the basis and operative Law of this agreement. The place of arbitration must be within the limit of Kolkata Municipal Corporation, West Bengal, India. The language of the arbitration must be in Indian English only. The parties shall be entitled to invoke the provision of Part 1 of the Arbitration and Conciliation Act, 1996. The power of Ld. Arbitrator shall not be restricted, it shall also include power to grant interest (including the interest till the time the winner party recover the claim and/or monetary value from loser party), other consequential loss and lost profit.”

17. There can hence be no doubt that the parties had agreed to refer all disputes and differences arising out of the contract for arbitration. Claim of the 1st respondent against the 1st petitioner is one arising from the contract and hence is arbitrable. After having agreed before the High Court of Calcutta for reference to arbitration in an application in which all the parties to the contract were parties either as petitioner or respondents, it is not open to the petitioners to submit that the claim of the 1st respondent as against the 1st petitioner cannot be subject matter of the arbitration. Though it has been referred to as a counter claim, it is in effect a claim between the said parties.

18. In the above view of the matter, the decisions referred to



above which lay down that there cannot be a counter claim against a co-defendant under Order VIII Rule 6A of the Code of Civil Procedure, 1908 cannot apply to these proceedings. This is all the more so since Section 19 of the Arbitration and Conciliation Act, 1996 specifically says that arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908. I do not find any reason to interfere with the well-considered order of the execution court.

The civil revision petition fails and is dismissed. However, this is without prejudice to the contentions of the petitioners in the application under Section 34 of the 1996 Act before the Calcutta High Court.

Sd/-
T.R. RAVI
JUDGE

dsn/Pn

APPENDIX OF CRP NO. 437 OF 2025

PETITIONER ANNEXURES

- Annexure 1 A TRUE COPY OF THE ARBITRAL AWARD DATED 23.06.2022 IN THE MATTER OF D. MONALISA IMPEX V. M/S. KARTHIK EXPORTS & ANOTHER
- Annexure 2 A TRUE COPY OF E.P. NO. 16 OF 2025 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE, PATHANAMTHITTA,
- Annexure 3 A TRUE COPY OF E.A. NO. 2 OF 2025 DATED 29.07.2025 IN E.P. NO. 16 OF 2025
- Annexure 4 CERTIFIED COPY OF THE ORDER DATED 10.09.2025 IN EA NO.02 OF 2025 IN E.P. NO. 16 OF 2025 ON THE FILE OF THE COURT OF THE SUBORDINATE JUDGE, PATHANAMTHITTA

RESPONDENT ANNEXURES

- Annexure R1(A) A copy of the tripartite agreement dated 29.03.2019
- Annexure R1(B) A copy of the Counter Statement filed by the Petitioner no.2 on behalf of Petitioner no.1 before the Learned Arbitral Tribunal dated 09.08.2019
- Annexure R1(C) A copy of the application under Section 16 of the 1996 Act, filed by the Petitioner no.1 before the Learned Arbitral Tribunal dated 04.09.2021
- Annexure R1(D) True copy of the order subsequently passed against the said Ann.C application by the Hon'ble Tribunal dated 01.11.2021
- Annexure R1(E) A copy of an application under Section 14 of the 1996 Act being AP No. 73 of 2021, together with Consent letter and vakalatnama filed by the Petitioner no.2 on behalf of the Petitioner no.1 before the Hon'ble High Court at Calcutta
- Annexure R1(F) A copy of Order dated 15.02.2021 passed by the Hon'ble High Court at Calcutta, thereby dismissing the said application under Section 14 of 1996 Act

CRP No.437 of 2025

-23-



2026:KER:46677

Annexure R1(G) A copy of the application under Section 34 of the 1996 Act dated 09.11.2022 filed by the Petitioner no.1 before the Hon'ble High Court at Calcutta