

-CRA-409-2026.DOC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 409 OF 2026

ARUN
RAMCHANDRA
SANKPAL

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ARUN RAMCHANDRA
SANKPAL
Date: 2026.09.29
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M/s Ganesh Land Developers & Construction
Private Limited, a Company through
its Directors:-

1-1 Ganpat Bhaskar Raut, Age Adult
Occupation : Business,
1-2 Rajendra Laxman Patil, Age Adult
Occupation : Business,
1-3 Bhalchandra Raghunath Raut,
Age Adult, Occupation Business
Having office at Near Prakash
Talkies, Behind ICICI Bank,
Ground Floor, Palghar – 401 404

...Applicant

Versus

1. Shradhha Realtors, a Partnership
Firm through Partners:

1-1 Avinashkumar Kamleshwar
Srivastav, Age 52 years,
Occupation Business,
1-2 Chetna Raichand Shah,
Age 52 years, Occ. Business,
Both having office at Plot No. 38,
Kamal Kunj Bungalow, Vishnu
Nagar, Mahim Road, Palghar (W),
Palghar, Tal & Dist. Palghar

2. Dhanrajsingh Hanumansingh Rajput
Hajari, Age Adult, Occ. Business,

3. Laxmidevi Dhanrajsingh Rajput Hajari,
Age Adult, Occ. Business/Agriculture

4. Tejrajsingh Dhanrajsingh Rajput Hajari
Age Adult, Occ. Business/Agriculture

ARS/SAINATH

1/26

5. Rajashri Alias Rajashri Tina
Dhanrajsingh Rajput Hajari,
Age Adult, Occ. Business/Agriculture
All residents of Jasoda Bhavan,
Near M.S.B. Office, Hanuman Chowk,
Old Palghar.

6. M/s R.K. Builders & Developers,
Partnership Firm through Partners
6-1 Kamal Mahadeo Dube,
Aged 42 years, Occ Business/Agriculture
Office at Hanuman Tekdi, Tekdi
Vevur, Palghar, Tal. & District Palghar.

...Respondents

Mr. Sanjiv Sawant, with Bhakti Wast, i/b Samir Suryawanshi, for the
Applicant.

Mr. Sumit Kothari, for Respondent No.1.

Mr. Juzer Udaipuri, with Sofia Udaipuri and Firdaus Udaipuri, for
Respondent Nos. 2 to 5.

CORAM : N. J. JAMADAR, J.

RESERVED ON : 7th SEPTEMBER 2026

PRONOUNCED ON : 29th SEPTEMBER 2026

JUDGMENT:

1. This Revision Application is directed against an order dated 4th July 2026, passed by the learned Civil Judge, Palghar, whereby the counter-claim filed by the Applicant in the Suit (RCS No. 35 of 2026), instituted by Respondent No.1, was directed to be excluded under the provisions of Order VIII Rule 6-C of the Code of Civil Procedure, 1908 ("the Code").

2. The background facts leading to this Application can be summarized as under:

2.1 Under a registered Sale Deed dated 10th August 2011, Respondent No. 1-the Plaintiff in RCS No. 35 of 2026, claimed to have purchased the land bearing Survey No. 87/A/1 and 88/A/1, situated at Mouje Palghar, more particularly described in paragraphs 6 and 7 of the Plaint (“the suit properties”).

2.2 Under a Sale Deed dated 6th November 2020, M/s R.K. Builders And Developers (D6) claimed to have purchased an undivided share in Survey Nos. 93/A/2/K/3 from Ranjitsing Hajari and another.

2.3 M/s Ganesh Land Developers And Construction Private Limited (D5) asserted that it was the holder of the lands bearing Survey No. 93/A/2/K/2, Survey No. 86/1/E/1 and Survey No. 121/3, more particularly described in paragraphs 2A and 2B of the Counter-claim, filed by Defendant Nos. 1 to 6 in RCS No. 35 of 2026.

2.4 In the wake of the disputes over the demarcation and possession of the respective suit lands, the Plaintiffs in RCS No. 35 of 2026, alleged that Defendant No.1 and R. K. Builders and Developers (D6) were the common holders of the land bearing Survey No. 121/3 and Survey No. 93/A/2/K/3 situated on the northern side of the suit properties. On some portion of the northern Side boundaries, the land bearing Survey

Nos. 93/A/2/K/2 and Survey No. 86/1, held by Defendant No.5 were situated.

2.5 The Plaintiff has obtained permission from the Planning Authority to erect a structure comprising ground plus seven floors. The Defendants made an attempt to encroach over the suit properties.

2.6 On 5th November 2025, the Defendants and their hirelings caused obstruction to the possession of, and the development being carried out by, the Plaintiff over the suit properties with the prior approval of the Planning Authority. On 7th November 2025 also the Defendants and their hirelings barged into the suit properties and caused damage to the barbed wire fencing thereof. Hence, Plaintiff sought a decree of perpetual injunction to restrain the Defendants from entering into the suit properties, causing obstruction to the possession and enjoyment of the Plaintiff over the suit properties and also from forcibly evicting the Plaintiff from the suit properties.

2.7 The Applicant and Respondent Nos. 2 to 6 herein-original Defendant Nos. 1 to 6 resisted the suit by filing Written Statement alongwith Counter-claim. The Defendants contended that, the Plaintiff has obtained permission from the Planning Authority to erect a building, over the land which does not exist at the suit site. The Plaintiff had obtained the building permission from the Planning Authority either by misleading or in connivance with the officers of the Planning

Authority. On the strength thereof, the Plaintiff is trying to encroach upon the property of the Defendants, described in paragraph 2A and 2B of the Counter-claim (“Counter-claim property”). The Defendants have pleaded a counter version in regard to the incident that has allegedly occurred on 5th November 2025.

2.8 The Defendants have thus sought a declaration that the Defendants are the owners of the Counter-claim property and for the consequential relief to restrain the Plaintiff from causing obstruction to the possession and enjoyment of the Defendants, and committing encroachment, over the Counter-claim property.

2.9 During the pendency of the suit, the Defendants preferred an Application for appointment of the Court Commissioner to demarcate the suit and counter-claim properties and an Application under Order XI Rules 12 and 14 of the Code, seeking production of the documents relating to 4th April 2026 Sale Deed on the premise that the suit properties described in the Plaint did not exist and a boundary dispute has arisen between the Plaintiff and the Defendants. The Plaintiff filed an Application for extension of ad-interim relief. Defendant Nos. 2 to 6, in turn, sought a status-quo order.

2.10 By an order dated 27th March 2026, the trial Court after observing that the dispute between the parties was in relation to the boundaries of the suit properties and counter-claim properties, directed both the

parties to maintain status-quo regarding the suit properties.

2.11 It seems that on 12th February 2026, a measurement was carried out at the instance of Defendant No.5.

2.12 Thereafter, Respondent No.1-Original Plaintiff filed an Application under Order VII Rule 11 of the Code, seeking rejection of the Counter-claim on the ground that it was unconnected with the suit properties, and another suit, being RCS No. 84 of 2023, wherein the Counter-claim property was the subject matter, instituted by the third parties, was sub-judice.

2.13 The Defendants-Plaintiffs in the Counter-claim resisted the Application.

2.14 By the impugned order, the learned Civil Judge was persuaded to invoke the provisions contained in Order VIII Rule 6-C of the Code to exclude the Counter-claim from RCS No. 35 of 2026. The learned Civil Judge was of the view that the suit properties and the Counter-claim properties were different. There was no nexus between the Suit properties and Counter-claim properties. Nor there was physical overlapping of the properties. Thus, the Counter-claim deserved to be excluded.

2.15 Being aggrieved, the Defendants have invoked the revisional jurisdiction of this Court.

3. I have heard Mr. Sanjiv Sawant, the learned Counsel for the Applicant, Mr. Sumit Kothari, the learned Counsel for Respondent No.1 and Mr. Juzer Udaipuri, the learned Counsel for Respondent Nos. 2 to 5, at some length.

4. Mr. Sanjiv Sawant, the learned Counsel for the Applicant, submitted that the learned Civil Judge completely misconstrued the nature of the Suit and the Counter-claim and scope of the provisions contained in Order VIII Rule 6-C of the Code. Amplifying the submissions, Mr. Sawant would urge, a bare perusal of the averments in the Complaint itself indicates that the Plaintiff has approached the Court with categorical assertions that the Counter-claim properties are situated on the northern side of the suit properties and, in their capacity as the holders of the adjoining lands, the Defendants have allegedly attempted to commit encroachment over the suit properties and threatened to dispossess the Plaintiff therefrom.

5. Mr. Sawant invited the attention of the Court to the description of the suit properties in the Complaint, especially the boundaries thereof, and the averments in paragraph 19 of the Complaint. The learned Civil Judge, according to Mr. Sawant, was thus not at all justified in holding that there was no nexus between the properties described in the Complaint and the Counter-claim.

6. At any rate, according to Mr. Sawant, it is not the requirement of law that the subject matter of the Suit and Counter-claim must be identical. Tenability of the Counter-claim depends upon the accrual of the cause of action to the Defendants against the Plaintiff and not the identity of the subject matter of the Suit and the Counter-claim. The learned Judge thus committed a manifest error on facts in observing that there was no nexus between the suit properties and the Counter-claim properties, and a grave error of law in holding that, in the absence of the identity of the Suit properties and the Counter-claim properties, the Counter-claim deserved to be excluded.

7. To buttress the aforesaid submissions, Mr. Sawant placed a very strong reliance on a judgment of the Supreme Court in the case of **Jag Mohan Chawla And Anr Vs Dera Radha Swami Satsang and Ors**,¹ wherein it was enunciated that the Counter-claim need not relate to or be connected with the original cause of action or matter pleaded by the Plaintiff.

8. Mr. Juzer Udaipuri, the learned Counsel for Respondent Nos. 2 to 5, supplemented the submissions of Mr. Sawant. It was urged that the claim of the Plaintiff was demonstrably false.

9. In opposition to this, Mr. Sumit Kothari, the learned Counsel for Respondent No.1-Plaintiff, supported the impugned order. It was urged that the suit properties and Counter-claim properties were completely

¹ (1996) 4 SCC 699.

distinct and, therefore, the learned Civil Judge was justified in holding that there was no nexus between the two sets of properties. In any event, there is no element of prejudice likely to be caused to the Applicant and co-Defendants as they can institute a separate suit seeking declaration, ownership and possession of the Counter-claim properties.

10. Mr. Kothari further submitted that, the Defendants do not have an absolute and unqualified right to file the Counter-claim. The Code empowers the Court to exclude the Counter-claim where the Court comes to the conclusion that the claim raised by the Defendants ought not to be disposed by way of Counter-claim but in an independent suit. As a second limb of this submission, Mr. Kothari would urge, the learned Civil Judge has exercised the discretion under the provisions of Order VIII Rule 6-C of the Code, objectively. It cannot be said that the discretion has been exercised injudiciously or arbitrarily. Such exercise of discretion is not open for interference in the revisional jurisdiction.

11. In order to lend support to the aforesaid submissions, Mr. Kothari placed reliance on a three Judge Bench judgment of the Supreme Court in the case of **Satyender And Ors Vs Saroj And Ors**² and a decision of a learned Single Judge of this Court in the case of **Abhishek S/o Vikram Boke Vs Dr Ashwinikumar Arvind Deshmukh**.³

2 (2022) 17 SCC 154.

3 2017 (1) Mh.L.J. 342.

12. I have given anxious consideration to the aforesaid submissions canvassed across the Bar. With the assistance of the learned Counsel for the parties, I have also perused the averments in the Plaint and the Counter-claim.

13. To begin with, it may be apposite to note the provisions of the Code which permit the filing of a Counter-claim.

“6-A. Counter-claim by defendant.—(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

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

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

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

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

14. A bare perusal of the provisions contained in Order VIII Rule 6-A of the Code makes it abundantly clear 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 limited for delivering his defence has expired. A counter-claim can be in the nature of a claim for damages or otherwise. Such Counter-claim will have the same effect as a cross-suit. It is governed by the rules of pleading applicable to Plaints. Under Order VIII Rule 6-G, rules relating to a Written Statement by a Defendant apply to the Written Statement filed in answer to a counter-claim.

15. From the phraseology of Order VIII Rule 6-A, it becomes evidently clear that, the right to file a Counter-claim inexorably emanates from the cause of action that has accrued to the Defendant against the Plaintiff either before or after the institution of the Suit, but before the Defendant has delivered his defence. It is thus deducible that, the limitation on the filing of the Counter-claim is with reference to the time at which the cause of action has arisen to the Defendant against the Plaintiff and not in regard to the subject matter of the counter-claim.

16. Rule 6-A also does not incorporate any restraint in regard to the nature or type of the right or claim that can be raised by the Defendant

by way of Counter-claim. The expression, “any right or claim in respect of a cause of action accruing to the Defendant” makes it abundantly clear that any right or claim can be set up by the Defendant by way of a Counter-claim. The text of Rule 6-A does not give any indication even by implication, much less in express terms, that the Counter-claim must flow from the claim made by the Plaintiff in the suit. In contrast, Rule 6-A contains a clear intendment to the contrary by the use of the expression, “by way of Counter-claim against the claim of the Plaintiff”. This is in contradistinction to Rule 6 of Order VIII, which provides for the set-off, that uses the expression “set-off against the Plaintiff’s demand”.

17. The intention of the Parliament in providing an avenue to raise any right or claim by way of counter-claim becomes even clearer if the object and purpose of the provisions of the Rules that enable the filing of the Counter-claim are appreciated.

18. The primary object is to avoid multiplicity of judicial proceedings and save upon the Court’s time and also to obviate the inconvenience to the parties by a joint determination of the claims and counter-claims and, therefore, resolve all the disputes between the same parties in one and the same proceeding.

19. In the case of *Jag Mohan Chawla (supra)*, on which reliance was placed by Mr. Sawant, the Supreme Court considered the questions :

Whether in a suit for injunction, counter-claim for injunction in respect of the same or a different property is maintainable ? Whether counter-claim can be made on different cause of action ?

20. After adverting to the import of the legislative change brought about by the CPC Amendment Act, 1976, the Supreme Court expounded the legal position as under :-

“5.The counter-claim could be treated as a cross-suit and it could be decided in the same suit without relegating the parties to a fresh suit. It is true that in money suits, decree must be conformable to Order 20, Rule 18, CPC but the object of the amendments introduced by Rules 6-A to 6-G are conferment of a statutory right to the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In sub-rule (1) of Rule 6-A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject-matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross-suit with all the indicia

of pleadings as a plaintiff including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection (sic protraction), the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit. Acceptance of the contention of the appellant tends to defeat the purpose of amendment. Opportunity also has been provided under Rule 6-C to seek deletion of the counter-claim. It is seen that the trial Court had not found it necessary to delete the counter-claim. The High Court directed to examine the identity of the property. Even otherwise, it being an independent cause of action, though the identity of the property may be different, there arises no illegality warranting dismissal of counter-claim. Nonetheless, in the same suit, both the claim in the suit and the counter-claim could be tried and decided and disposed of in the same suit.”

21. The aforesaid exposition of law makes it abundantly clear that, the counter-claim need not be confined to the cause of action of the same nature as the original cause of action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. Nor does the cause of action for the counter-

claim arise from or have any nexus with the cause of action that constrained the plaintiff to institute the suit. The only limitation is that, the cause of action should have arisen before the time fixed for filing the written statement expires. The very purpose of introducing the Rules 6-A to 6-G of Order VIII of the Code was to obviate multiplicity of the proceedings and avoidable protraction of the proceedings by empowering the Court to try and decide both the suit and the counter-claim in one and the same proceeding as suit and cross-suit, even though the counter-claim stems out of an independent cause of action that has accrued to the defendants against the plaintiff.

22. In the aforesaid judgment the Supreme Court has expressly observed that, though the identity of the property may be different that does not warrant dismissal of the counter-claim.

23. Mr. Kothari, the learned Counsel for Respondent No.1, made a strenuous effort to drive home the point that, the aforesaid decision in the case of *Jag Mohan Chawla (supra)*, was considered by a three-Judge Bench of the Supreme Court in the case of *Satyender & ors. (supra)*. And, yet, the three-Judge Bench of the Supreme Court enunciated that, the counter-claim should have been excluded under the provisions of Order VIII Rule 6-C of the Code. Reliance was placed by Mr. Kothari on the following observations :-

“23. The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints A counter claim can be set up only

“against the claim of the plaintiffs”. Since there was no claim of the plaintiffs regarding Killa No. 6//8 and 23, the defendants were barred to raise any counter claim on these Killa numbers in view of Order 8 Rule 6-A CPC as it has nothing to do with the plaintiffs. It is true that a counter claim can be made by the defendant, even on a separate or independent cause of action [*Jag Mohan Chawla v. Dera Radha Swami Satsang* (1996) 4 SCC 699].

24. The Legislature permits the institution of a counter claim, in order to avoid multiplicity of litigation. But then it has certain limitations such as that the counter claim cannot exceed the pecuniary limits of the jurisdiction of the court, and that such counter claim must be instituted before the defendant has delivered his defence or before the time limit for delivering his defence has expired. More importantly, such a counter claim must be against the plaintiff ! Evidently, in the present case the counter claim was not against the plaintiffs. Moreover, as the plaintiffs had not claimed any right over the property and the Killa Nos. 6//8 and 23 are not even a part of the suit property described in the plaint by the plaintiffs. Despite the same, such a claim has been allowed against the plaintiffs. In fact, we do not find on record any reply submitted by the plaintiffs against the counter claim. To be fair, such a counter claim should have been excluded in terms of Order 8 Rule 6-C CPC. Suffice it to state here that the counter claim set up by the defendants has been rightly rejected by the High Court.”

24. The aforesaid observations are required to be appreciated in the backdrop of the facts of the case as recorded by the Supreme Court in Paragraph No.21, which reads as under :-

“21. The other finding of second appellate court regarding the counterclaim of the defendants on Killa Nos. 6//18 and 23 is, however, correct and is based on right interpretation of Order 8 Rule 6-A CPC. From the pleadings of the plaintiffs, it is clear that they had never raised any claim on Killa No. 6//18 or Killa No. 23. The defendants in their written statement while denying the rights of the plaintiffs on the land of which particulars had been given by the plaintiffs, quite ingeniously inserted the two Killa Nos.6//18 and 23, setting a counter-claim on these plots. The trial court and the first appellate court while dismissing the plaintiffs’ suit had allowed this claim for (sic) without assigning any reasons. In fact, this counterclaim which was raised by the defendant is barred under Order 8 Rule 6-A CPC.”

25. It is pertinent to note, the Supreme Court did not deviate from the enunciation of law in the case of *Jag Mohan Chawla (supra)*. On the contrary, the three-Judge Bench in terms observed that, a counter-claim can be made by the defendant, even on a separate or independent cause of action and for that proposition, reference was made to the decision in the case of *Jag Mohan Chawla (supra)*. On facts, the Supreme Court found that, the defendants therein had not made any counter-claim against the plaintiffs and, in that context, the Supreme Court observed that, a counter-claim must be against the plaintiff and the claim made by the defendants was in respect of the properties which were not even part of the suit properties described in the plaint and, thus, such a

counter-claim should have been excluded in terms of Order VIII Rule 6-C of the Code.

26. The aforesaid decision, cannot be read as laying down the proposition that, the counter-claim must relate to the property which is the subject matter of the suit or must arise or flow from the cause of action pleaded by the plaintiff. On the contrary, the three-Judge Bench has reiterated in no uncertain terms that, a counter-claim can be made by the defendant, even on a separate or independent cause of action.

27. This propels me to the justifiability of the exercise of discretion by the trial Court to exclude the counter-claim under the provisions of Rule 6-C of Order VIII of the Code. It reads as under :-

ORDER VIII

“6-C. Exclusion of counter-claim. - Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.”

28. A plain reading of the aforesaid Rule would indicate that, it enables the plaintiff to apply to the Court that the claim raised by the defendant by way of a counter-claim ought not be disposed of as a counter-claim but in an independent suit. The plaintiff may activate the

said Rule at any time before the settlement of issues in relation to the counter-claim. The Rule confers discretion on the Court to make such order as it thinks fit. Evidently, the Court may exercise the discretion to exclude the counter-claim or direct that the counter-claim shall be tried and disposed of as a cross-suit.

29. Undoubtedly, the Rule 6-C vests discretion in the Court to pass an order to exclude the counter-claim. However, such discretion is required to be exercised by the Court in a judicious manner as is the norm for the exercise of discretion wherever the legislature vests discretion in the Court. A judicious exercise of discretion would enjoin the Court to be cognizant of all the relevant factors which bear upon the same. The discretion cannot be exercised unreasonably or arbitrarily, *dehors* the weight of the facts and circumstances of the given case.

30. The thrust of the submission of Mr. Kothari was that, the legislative intention in enabling the plaintiff to apply to the Court to exclude the counter-claim is required to be kept in view. If the plaintiff applies to the Court and the Court, in turn, finds it expedient to exclude the counter-claim, such exercise of discretion cannot be interfered with. A very strong reliance was placed by Mr. Kothari on the judgment of this Court in the case of *Abhishek Boke (supra)*. In the said case, a learned Single Judge of this Court, construed the provisions of Rule 6-C as under :-

“13.The intention of the Legislature in incorporating Rule 6-C of Order 8 of the Code of Civil Procedure is clear and suggests that the request made on behalf of the plaintiff to exclude the counter-claim, has to be given due weightage. It is the cardinal principle in judicial proceedings that the party to the proceedings has the inherent right to oppose any claim made by the other party, even if there is no provision in the statute providing a right to the party to oppose the claim of the other party. Therefore, when Rule 6-C is incorporated in Order 8 of the Code of Civil Procedure, it is clear that the Court is bound to consider the request of the plaintiffs. Though the latter part of Rule 6-C of Order 8 of the Code of Civil Procedure gives discretion to the Court to pass appropriate orders on the application made by the plaintiffs requesting that the counter-claim be excluded, the discretion will have to be exercised in favour of the plaintiff. The object of Rule 6-C of Order 8 of the Code of Civil Procedure appears to be based on the cardinal principle that the plaintiff is dominus litis and it is the right of the plaintiff to proceed with the civil suit in the manner he feels proper and best suited for proving his case. If the defendant is permitted to make counter-claim, he gets the right to steer the civil suit as per his wishes and in certain situations there may be a conflict between the plaintiff and the defendant on the point as to how the civil suit should proceed.

If the provisions of Rule 6C of Order 8 of the Code of Civil Procedure are not given the above meaning, but are construed to mean that the request of the plaintiff to exclude the counter-claim is immaterial, then the provisions of Rule 6C of Order 8 of the Code of Civil Procedure will be rendered nugatory.”

31. Indeed, the learned Single Judge, has enunciated in terse terms that the request made on behalf of the plaintiff to exclude the counter-claim, has to be given due weightage. The aforesaid enunciation is premised on the principle that, the plaintiff is *dominus litus* and has the right to proceed with the suit in the manner he feels proper and best suited for the prosecution of his cause.

32. The aforesaid pronouncement, in the considered view of this Court, however cannot be construed as giving the plaintiff a *carte blanche*. As indicated above, the Rule enables the plaintiff to apply to the Court to have the counter-claim excluded. Ultimately, it is in the discretion of the Court to pass such order as it thinks fit. The ratio of the aforesaid pronouncement is that, the Court while considering the question as to whether the counter-claim is required to be excluded ought to have due regard to the application made by the plaintiff and deal with the grounds on which the exclusion of the counter-claim is sought. The Rule cannot be read to mean that, the plaintiff's wish has to be necessarily accepted by the Court, for the simple reason that, if it so construed, the discretion conferred on the Court would be subjugated to the desire of the plaintiff.

33. Moreover, it is an established canon of interpretation of statutes that one provision cannot be read in isolation. To gather the real intention of the legislature, the statute is required to be read as a whole,

section by section, clause by clause and word by word. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of *Reserve Bank of India Vs Peerless General Finance & Investment Co. Ltd., & ors.*⁴, which enunciates the position as under :-

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With those glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the Court's construction.”

(emphasis supplied)

4 AIR 1987 SC 1023

34. Applying the aforesaid well recognized principle of statutory interpretation the provisions contained in Rule 6-C of Order VIII of the Code are required to be read harmoniously with the provisions contained in Rule 6-A of Order VIII of the Code. By giving primacy to the provisions contained in Order VIII Rule 6-C of the Code and the wishes of the plaintiff, an interpretation which defeats the object of avoiding the multiplicity of the proceedings and ensuring the determination of all the questions in controversy between the parties in the same proceeding by trying the suit and the cross-suit, cannot be adopted.

35. In a given case, the Court may, having regard to the nature of the counter-claim find it appropriate that, the counter-claim be excluded and the claim therein be tried in an independent suit. A variety of factors may influence the exercise of discretion by the Court when called upon to consider the question of exclusion of the counter-claim. The nature of the counter-claim, the progress made in the suit, the complexity of the matter that may arise if the suit and the counter-claim are tried together, the likelihood of the protraction in the event of trial of the suit and the counter-claim together, and the like are the factors which may bear upon the exercise of discretion. However, the *ipse dixit* of the plaintiff cannot unduly weigh with the Court.

36. In the light of the aforesaid position in law, re-adverting to the facts of the case, the prime reason which seems to have weighed with the trial Court is that, the properties in the suit and the counter-claim were different and there did not appear to be any nexus between the properties in the suit and the counter-claim. In law, as noted above, the identity of the property is not necessary for the filing of the counter-claim by the defendant. The learned Civil Judge, thus, applied an incorrect test to decide the question as to whether the counter-claim was required to be excluded.

37. Even on facts, the learned Civil Judge, was in error in observing that, there was no nexus between the suit properties and the counter-claim properties. Not only in the description of the suit properties, were the counter-claim properties shown to be situated on the northern boundary of the suit properties but also in Paragraph No. 19 of the plaint, the plaintiff has made categorical assertion that, the counter-claim properties i.e. Survey Nos. 121/3 and 93/A/2/K/3 were situated on the northern side of the suit properties and the Defendant Nos.1 to 6 were the common owners of the said properties.

38. The learned Civil Judge lost sight of the fact that, the very genesis of the dispute between the parties was the alleged obstruction to the possession and enjoyment of the plaintiff over the suit properties, and the hindrances sought to be put in the development of the suit

properties by the defendants, who laid claim over the contiguous and adjoining counter-claim properties. Thus, the learned Civil Judge clearly misdirected himself in observing that, there was no nexus between the suit properties and the counter-claim properties.

39. This Court finds that, in the facts of the case, the determination of the suit and the cross-suit, in one and the same proceeding, is indispensable for a complete and effectual adjudication of all the disputes between the parties. The exclusion of the counter-claim will give rise to multiplicity of the proceedings and is also fraught with the risk of protracted litigation and conflicting orders as well.

40. The conspectus of the aforesaid consideration is that, the impugned order cannot be sustained as the learned Civil Judge has not exercised the discretion in a judicious manner. The revision application, therefore, deserves to be allowed.

41. Hence, the following order :-

:: O R D E R ::

- (i) The Civil Revision Application stands allowed.
- (ii) The impugned order dated 04th July, 2026, stands quashed and set aside.
- (iii) The counter-claim stands restored to the file of trial Court.
- (iv) The trial Court is requested to decide the suit

and the counter-claim in accordance with the provisions of law, as expeditiously as possible.

(v) It is clarified that, the consideration was confined to determine the legality, propriety and correctness of the order of exclusion of the counter-claim and the observations hereinabove shall not be construed as an expression of opinion on the merits of the matter.

No costs.

[N. J. JAMADAR, J.]