IJM Corporation Berhad Vs. M/s. Lakshmi Sai Constructions Company and Anr.

Civil Appeal No. 9775 of 2026 @ SLP (C) No. 647 of 2023 · Supreme Court of India · 2026-07-28 · J. B. Pardiwala · K. Vinod Chandran · F2J-C-1169

Full judgment text

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1. Leave granted.

2. The appellant is aggrieved by the impugned order which affirmed the order of the Trial Court permitting the defendant to pay court fees on a counter claim with a delay of 4 years and that too after the entire evidence in the suit was closed.

3. We heard Mr. Nishanth Patil, learned AoR appearing for the appellant and Mr. P. Mohith Rao, learned AoR appearing for the respondents.

4. Learned Counsel for the respondent referred to Section 149 of the Code of Civil Procedure, 1908 (the 'CPC') and specifically relied on the judgment in A. Nawab John & Ors v. VN Subramaniyam1.

5. In the above case, admittedly when the written statement was filed, there was a counter claim raised on 13.10.2015, which was returned on 02.11.2015 with a direction to file the written statement with the counter claim shown separately. The defense resubmitted it on 29.03.2016, requesting the Court to accept the written statement as they were unable to pay the court fees. The order passed by the Court is seen at Annexure P5. Though not happily worded, the written statement alone was taken on record.

The counter claim thus did not exist. Much later, on 05.03.2020, an application was filed, seeking permission to deposit the court fees payable on the counter claim within seven days with notice to the other side. The Trial Court permitted it on the same day. The court fees were paid on 09.03.2020 as per the memo dated 12.03.2020. A revision was preferred, challenging the order also on the ground that despite seeking time to file a counter to the application, the matter was disposed of without affording the plaintiff a reasonable opportunity of hearing.

6. A. Nawab John1 was a case in which a suit for specific performance was filed in which the defendant was set ex parte. However, on the very same date, the sole respondent before this Court had filed an intervention application on the ground that he had purchased the suit schedule property. He raised a contention under Order VII Rule 11 of the CPC that the court fees paid was beyond the time provided by Court, and hence, the plaint has to be rejected.

7. This Court specifically dealt with Section 149 of the CPC and held that it dealt with every document with respect to which court fees are required to be paid under the appropriate law and, therefore, when a plaint is presented to a Court without payment of appropriate court fees, undoubtedly the Court has the authority to call upon the plaintiff to make payment of the necessary court fees within a time stipulated. Such an authority of the Court can be exercised at any stage of the suit, was the finding.

8. No doubt, the defendant could have deposited the court fees, with leave of the Court at any stage, if the counter claim was available on record. In the present case, the defendant while resubmitting the written statement, through an application requested only for the written statement to be taken on record since they did not have the wherewithal to pay the court fese. This was specifically noticed in Annexure P5 order passed by the Court. Hence, there was no counter claim on record, though it may have been mentioned in the written statement.

9. Ideally, the defendant should have filed an application to either raise a counter claim or accept the counter claim already recited in the written statement and sought for payment of court fees. Even this procedure could not have been adopted in this case, since the trial had virtually concluded. We see from the order of the High Court that the evidence of the plaintiff was closed on 24.07.2019 and the

evidence of PW1 was closed on 29.01.2020 after which the I.A. seeking permission to pay the court fees was filed on 05.03.2020. When the counter claim was not on record, the plaintiff necessarily would not have adduced evidence to controvert the same.

10. After the trial was concluded, an amendment to the written statement, incorporating a counter claim; which was necessary as we noticed hereinabove, would have been difficult. Order VI Rule 17 of the CPC would have restricted such amendment, since though Rule 17 provides for amendment of pleadings at any stage of the proceedings with leave of the Court, the proviso permits such amendments after the trial has commenced, only in circumstances where the Court comes to the conclusion that despite due diligence the party was prevented from raising the matter before commencement of the trial. There is no such ground pleaded by the defendant and the only ground is of lack of financial capacity which too, in any event has to be pleaded and proved when amendment is sought.

11. In the present case, the trial itself had concluded. We find absolutely no reason to sustain the order passed by the High Court, affirming the order of the Trial Court. The Suit shall be adjudicated without the counter claim.

12. The appeal stands allowed with the above directions.

13. Pending applications, if any, shall also stand disposed of.

..................J. (J. B. Pardiwala)

..................J. (K. Vinod Chandran)

New Delhi;

July 28, 2026.

1 (2012) 7 SCC 738