



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.898 OF 2025**

1. Wadhwa and Associates Realtors Private Limited (now amalgamated with and known as Raghuleela Estates Private Limited)
A company registered under the provisions of the Companies Act, 1956 having its registered office at 301, Platina, Plot No.C-59, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051.

2. Vijay Vasudeo Wadhwa,
Aged 72 years, an adult, Indian Inhabitant, director of the Petitioner No.1, residing at 101, Ritu Apartments, 208, B.J. Road, Bandra (West), Mumbai – 400 050

3. Vinita Vijay Wadhwa, Aged 70 years, An adult, Indian Inhabitant, director of Petitioner No.1, residing at 101, Ritu Apartments, 208, B.J. Road, Bandra (West), Mumbai – 400 050 ... Petitioners

versus

Sarin Technologies India Private Limited,
A company registered under the provisions of the Companies Act, 1956,
having its office at, 07-110, Nesco IT Park, Building No.4, North Wing, Western Express Highway, Goregaon (East), Mumbai – 400 063 ... Respondents

Mr. Nakul Jain with Ms. Varsha Kule i/by SMA Law Partners, for Petitioners.
Mr. Shlok Parekh with Mr. Shray Mehta i/by Vaish Associates, for Respondent.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 6 JANUARY 2026
PRONOUNCED ON : 25 MARCH 2026

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Article 227 of the Constitution of India, the Petitioners – Defendants assail the legality, propriety and correctness of the order dated 6 May 2024 passed by the learned Judge, City Civil Court, Mumbai, whereby the Notice of Motion taken out by the Petitioners to grant leave to the Petitioners – Defendants to file additional written statement, came to be rejected.

3. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they are arrayed before the City Civil Court.

3.1 Defendant No.1 is a private limited company. Defendant Nos.2 and 3 are the directors of Defendant No.1. Under the Leave and Licence Agreement dated 1 August 2018, Defendant No.1 had granted the Respondent – Plaintiff a licence to use and occupy Unit No.104, on the first floor in the building known as 'Platina', situated at C-59, Bandra Kurla Complex, Bandra (East), Mumbai, with two car parking spaces (the subject

premises), for a term of 36 months, commencing from 5 March 2018. A sum of Rs.49,93,920/- was deposited by the Plaintiff with the Defendants by way of interest free deposit to be refunded at the termination of the licence. As the term of the licence was about to expire, correspondence was exchanged between the Plaintiff and Defendants in regard to the delivery of the possession of the subject premises to the Defendants and refund of the security deposit of Rs.49,93,920/-.

3.2 On 7 November 2020, the Plaintiff delivered possession of the subject premises to the Defendants. In the wake of the dispute over the refund of the security deposit, a suit came to be instituted for recovery of security deposit of Rs.49,93,920/- along with interest of Rs.10,60,710/-, computed at the rate of 18% p.a. from 12 November 2020 till the date of the institution of the suit and future interest.

3.3 The Defendants appeared and contested the suit by filing written statement. It was, inter alia, contended that, the claim for refund of Rs.60,54,630/- was false and untenable. The Defendants contended, there were outstanding licence fee, CAM charges and electricity bill dues aggregating to rs.5,42,225/- payable by the Plaintiff to the Defendants. Under the terms of the Leave and Licence Agreement, the Defendants were entitled to deduct the outstanding amount from the security deposit and refund the balance amount. The Defendants had shown willingness to pay the balance

amount after deducting the outstanding amount, but the Plaintiff adopted an unreasonable stand. Hence, the claim for refund of the entire security deposit without deduction, was not tenable.

3.4 It seems, after the written statement in the aforesaid terms came to be filed, the Plaintiff took out a Notice of Motion being Notice of Motion No.3016 of 2022 for a summary judgment on the strength of the admissions of liability by the Defendants in the written statement and email dated 18 November 2020. Thereupon, on 15 December 2022, the Defendants addressed a communication to the Plaintiff contending that, the Defendants were required to carry out repairs to restore the subject premises to its original state. Subsequently, on 24 March 2023, the Defendants took out a Notice of Motion seeking leave to file additional written statement, to lay a claim of Rs.96,82,345/- comprising a sum of Rs.5,25,000/- towards the cost of repairs and Rs.81,15,120/- towards loss of rental income for nine months.

3.5 In the affidavit in support of the Notice of Motion seeking permission to file additional written statement, the Defendants asserted that the original written statement filed by the Defendants on 4 August 2022, did not make reference to several important and vital facts. Though the Defendants had disclosed all the relevant facts to the erstwhile Advocate, who drafted written statement on behalf of the Defendants, yet, on account of the sheer inadvertence of the erstwhile Advocate, necessary pleadings and appropriate

defence could not be put forth in the original written statement. Therefore, for adjudication of the real controversy between the parties, it was necessary to permit the Defendants to place on record vital facts by way of additional written statement.

3.6 The Plaintiff resisted the Notice of Motion by filing an affidavit in reply. It was contended, *inter alia*, that the Notice of Motion had been taken out to wriggle out of the clear and categorical admission of the liability by the Defendants in the original written statement. The claim in the additional written statement was a creature of an after-thought. A sort of counter-claim was sought to be raised belatedly, without any foundation in the original written statement and supporting material with a view to delay the disposal of the suit, which deserved to be decreed on the basis of clear and categorical admissions in the written statement. An attempt was made to demonstrate how the proposed counter-claim was infirm, in the sense that, neither the date of the accrual of the cause of action to file the counter-claim nor the clause with regard to the court fees, finds mention in the additional written statement. At any rate, the Plaintiff averred, by way of additional written statement, the Defendants cannot be permitted to withdraw the admissions and take a diametrically opposite stand to the one already taken in the original written statement.

3.7 After the appraisal of the pleadings, material on record and the

submissions canvassed on behalf of the parties, by the impugned order, the learned Judge, City Civil Court, was persuaded to reject the Notice of Motion observing, inter alia, that the purported additional written statement along with the counter-claim was sought to be filed with intent to wriggle out of the admissions in the original written statement. Such a course, according to the learned Judge, City Civil Court was impermissible.

3.8 Being aggrieved thereby, and dissatisfied therewith, the Defendants have invoked the writ jurisdiction.

4. I have heard Mr. Nakul Jain, learned Counsel for the Petitioners – Defendants and Mr. Shlok Parekh, learned Counsel for the Respondent, at some length. Learned Counsel for the parties took the Court through the pleadings and documents on record.

5. Mr. Jain, learned Counsel for the Petitioners, would submit that the learned Judge, City Civil Court, took a very constricted view of the matter. The explanation offered by the Defendants for not filing the counter-claim along with the original written statement was not properly appreciated by the learned Judge, City Civil Court. In the process, learned Judge, lost sight of the scope of the provisions contained in Order VIII Rule 9 of the Code of Civil Procedure, 1908, which expressly permits filing of additional pleadings, post written statement; albeit with the leave of the Court. Ultimately, Mr. Jain would urge, the procedure is handmaid of justice and the learned Judge, City Civil

Court, committed an error in not addressing herself the question as to whether the pleadings by way of proposed additional written statement were necessary for determination of real questions in controversy between the parties, and, thereby avoid multiplicity of proceedings.

6. Mr. Jain further submitted that, the impression carried by the learned Judge that, it was absolutely impermissible to withdraw the admissions was also flawed. In a given case, the Defendants are entitled to take inconsistent pleas and explain away the admissions in the written statement, if they constituted mis-statement of facts, or otherwise, appeared to be incorrect or inadvertently made. To this end, Mr. Jain placed reliance on the judgment of the Supreme Court in the case of **Sushil Kumar Jain v/s. Manoj Kumar and Anr.**¹

7. Per contra, Mr. Parekh, learned Counsel for the Respondent – Plaintiff, would submit that the learned Judge has correctly exercised jurisdiction not to permit the Defendants to file additional written statement. Laying emphasis on the sequence of events, especially the filing of the Notice of Motion by the Plaintiff for summary judgment, Mr. Parekh would urge that, the additional written statement was professed to be filed to wipe out the admissions and delay the disposal of the suit. The original written statement contained clear and explicit admissions of the liability to refund the security deposit. The

1 (2009) 14 SCC 38

effect of those admissions was sought to be diluted by pleading a wholly gratuitous defence.

8. Mr. Parekh further submitted that the additional written statement which is stated to be in the nature of counter-claim, cannot be permitted to be filed after the original written statement was filed, as a matter of course. It is settled law that, belated counter-claim does not deserve to be entertained. Mr. Parekh placed a very strong reliance on the judgment of the Supreme Court in the case of **Bollepanda P. Poonacha and Anr. V/s. K.M.Madapa**².

9. Order VIII Rule 9 of the Code, reads as under :

“9. Subsequent pleadings. - No pleading subsequent to the written statement of a defendant other than by way of defence to 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 of not more than thirty days for presenting the same.”

10. In plain terms, Rule 9 of Order VIII provides that, there shall be no pleading subsequent to the written statement other than by way of defence to set-off or counter-claim, except by the leave of the Court. The object of Rule 9 is to circumscribe the stage of pleading in the suit. In the absence of any set-off or counter-claim set up by the Defendant, the main part of Rule 9

² (2008) 13 SCC 179

precludes further pleading except with the permission of the court. A situation is not inconceivable where the Plaintiff may be required to traverse the pleadings in the written statement, even where no set off or counter-claim is set up or the Defendant may be required to file an additional written statement to amplify or supplement or even raise a contention thitherto not taken, by filing the additional written statement. To address such contingency, the latter part of Rule 9 empowers the court to permit the parties to file further pleading post the written statement. However, the exercise of the said power is discretionary, and it is well recognised, where the discretion is vested in the Court, such discretion is required to be exercised in a judicious manner after being informed of all the relevant considerations.

11. At this stage, it is necessary to note that the legislature has envisaged the possibility of the additional pleadings, post the written statement, sans a set off or counter-claim, even though under Order VI Rule 17 of the Code, the parties can seek amendment in the pleadings. Of course, amendment in pleading after the commencement of the trial is subject to the satisfaction of the jurisdictional fact, envisaged by the proviso to Order VI Rule 17, post 2000 CPC Amendment.

12. The provisions contained in Order VI Rule 17 and Order VIII Rule 9, however, operate in different spheres. In the case of **P.A.Jayalakshmi V/s.**

H. Saradha and Ors.³, the Supreme Court had an occasion to explain the distinction between Order VIII Rule 9 of the Code and Order VI Rule 17 thereof. It was enunciated that, Order VI Rule 17 speaks of amendment of pleadings whereas Order VIII Rule 9 provides for subsequent pleadings by a defendant. The distinction between the two provisions is evident. Whereas by reason of the former unless a contrary intention is expressed by the court, any amendment carried out in the pleadings shall relate back to the date of filing original thereof, subsequent pleadings stand on different footings. In the facts of the said case, the Supreme Court enunciated that, ordinarily at a belated stage, leave for filing additional written statement is usually not granted.

13. On the aforesaid touchstone, reverting to the facts of the case, from the affidavit in support of the Notice of Motion seeking permission to file the additional written statement, the only reason that is discernible is that, the erstwhile Advocate appearing on behalf of the Defendants did not include various facts, which ought to have been pleaded as defences on behalf of the Defendants in the written statement, though the authorized signatory of the Defendants had given necessary instructions to the erstwhile Advocate. On account of sheer inadvertence of the erstwhile Advocate, requisite pleadings and defences were not putforth.

14. The justifiability of the aforesaid explanation is required to be decided

3 (2009) 14 SCC 525

through the prism of the contentions in the original written statement. In Para 7, clauses (e), (g), (h), (i), (k), (l), (n) and (o) of the original written statement, there are clear and explicit contentions which partake the character of admissions that the Defendants were ready and willing to refund the security deposit after deducting a sum of Rs.5,42,225/- towards the outstanding licence fee, CAM charges and electricity charges. It was further contended that the Defendants had requested the Plaintiff to provide some time to refund security deposit on account of the exigency of the situation which arose on account of the Covid – 19 Pandemic disruptions.

15. In the context of the aforesaid contentions in the written statement, a criticism was advanced on behalf of the Plaintiff that the endeavour of the Defendants was to wriggle out of the admissions by filing additional written statement, raising a fanciful claim. As the Defendants could not have been permitted to seek amendment in the original written statement so as to withdraw the admissions, the Defendants have resorted to the device of additional written statement.

16. All amendments which are necessary for the determination of the real question in controversy between the parties are required to be allowed. In the case at hand, the interdict contained in the proviso to Order VI Rule 17 of the Code does not operate. Thus, the overarching principles of necessity of the proposed amendment for the determination of the real question in controversy

between the parties and the potentiality of the prejudice to the Plaintiff would govern the situation. The distinction between the approach expected of the Court in the matter of amendment of a plaint and the amendment of a written statement also deserves to be kept in view. Ordinarily, the potentiality of prejudice to the Plaintiff is remote where the Defendant seek to amend the written statement. The addition of a new ground of defence or substitution or alteration of defence does not raise same problem as adding, altering or substituting a new cause of action. (**Baldev Singh and Ors. V/s. Manohar Singh and Anr.**⁴ and **Usha Balasaheb Swami and Ors. V/s. Kiran Appaso Swami and Ors.**⁵). Thus, a more liberal approach is warranted in the case of amendment in the written statement.

17. In the case of **Sushil Kumar Jain (supra)**, on which reliance was placed by Mr. Jain, it was, inter alia, observed that, even assuming that there was admission made by the Defendant in his original written statement, then also such admission can be explained by the Defendant by amendment of his written statement even by taking inconsistent pleas or substituting or altering his defence.

18. The aforesaid observations of the Supreme Court in the case of **Sushil Kumar Jain (supra)**, cannot be considered torn out of context. In the said case, in the initial written statement, the Defendant had pleaded that the

4 (2006) 6 SCC 498

5 (2007) 5 SCC 607

Defendant was in the occupation of the premises under different tenancies. By way of amendment, the Defendant proposed to delete the words 'under different tenancies'. In that context, the Supreme Court held that, what was sought to be removed was the contradiction and confusion having been caused in the original written statement, which was never intended to be an admission.

19. In the case at hand, however, it is not a stray sentence pleaded in an unguarded moment which the Defendants seek to delete or explain away. In clauses (e), (g), (h), (i), (k), (l), (n) and (o) of paragraph No.7 of the written statement, there are clear and unequivocal admissions that the Defendants were ready and willing to refund the security deposit, after deducting outstanding amount Rs.5,42,225/- towards the outstanding licence fee, CAM charges and electricity charges. These series of admissions cannot be simply wished away by laying the blame at the doorstep of the erstwhile Advocate.

20. What exacerbates the situation is the contentions in the proposed additional written statement on behalf of the Defendants. The following contentions deserve extraction :

“The authorized representative of Defendant No.1 in good faith was under an impression and bonafide belief that whatever was instructed to the erstwhile Advocate was included and pleaded in the Written Statement and therefore, signed and filed the Written Statement. However,

when Notice of Motion for summary judgment and decree was filed by the Plaintiff and a copy was provided to the authorized signatory for its comments, he was shocked and surprised to see that categorical admissions on the part of the Defendants were made in the Written Statement which is not the factual situation and the Defendant is entitled to recover an amount more than what is stated in the Written Statement filed earlier by the Defendants. Therefore, categorical admissions could not have been made in the Written Statement. It is a settled position of law that the client should not suffer for its Advocates' mistakes.”

21. The aforesaid contentions indicate that the Defendants themselves reckoned that the contentions in the original written statement do constitute admissions, and thus betray an intent to overcome those admissions. The proposed additional written statement which, thus, lays a claim for an amount, far in excess of the outstanding claimed in the original written statement, is a complete departure from, and at variance with, the original pleading, and is, proposed to be filed with a view to salvage the position on account of the admissions in the original written statement. Therefore, the learned Judge, City Civil Court, was justified in exercising the discretion not to permit the Defendants to file additional written statement.

22. A useful reference can be made to a three-judge Bench judgment of the Supreme Court in the case of, **M/s Modi Spinning & Weaving Mills Co Ltd**

and Anr Vs M/s Ladha Ram and Co,⁶ wherein the impermissibility of displacing the Plaintiff completely from the admissions made by the Defendant in the written statement, was highlighted, in the following terms:

“9.

The defendants cannot be allowed to change completely the case made in paragraphs 25 and 26 of the written statement and substitute an entirely different and new case.

10. It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied that opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial court.”

23. In regard to the submissions premised on the counter-claim contained in the additional written statement, at the outset, it is necessary to note that, the proposed additional written statement strictly does not constitute a counter-claim with the specific and requisite pleadings. Neither the date of accrual of the cause of action for the counter-claim has been pleaded, nor a specific prayer for the recovery of the amount by way of counter-claim is

⁶ (1976) 4 SCC 320.

made. Nor the Defendants have professed to pay the court fees on the proposed counter-claim. It was, however, contended that the defendants were filing separate counter-claim in the said suit in respect of the amount mentioned in the additional written statement.

24. In this view of the matter, it may not be advisable to delve into the aspect of the maintainability of the counter-claim as that issue would be required to be determined by the City Civil Court as and when the same crops up for consideration.

25. For the foregoing reasons, the Writ Petition deserves to be dismissed.

26. Hence, the following order :

ORDER

- (i) The Writ Petition stands dismissed with costs.
- (ii) Rule discharged.

(N.J.JAMADAR, J.)