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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Date of decision: 13th July, 2026.**Uploaded on: 16th July, 2026.*

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FAO (COMM) 253/2025

NARESH KUMAR ANAND

.....Appellant

Through: Mr. Abhay Chitravanshi and Ms.
Bhawna Nanda, Advocates.

versus

M/S GOLD SQUARE SALES PVT LTD

.....Respondent

Through: Ms. Geeta Malhotra, Advocate.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE VIKAS MAHAJAN****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant under Section 104 read with Order 43 Rule (l)(c) of the Civil Procedure Code, 1908 (*hereinafter*, 'CPC'), *inter alia*, challenging the impugned order dated 2nd July 2025 passed by the Trial Court (South), Saket Court, New Delhi (*hereinafter* 'Trial Court').
3. *Vide* the impugned order, the Appellant's counter claim was dismissed in default and the application seeking restoration of the counter claim was also dismissed.
4. The submission of Id. Counsel for the Appellant is that the date of hearing was wrongly noted, due to a clerical mistake, and it was only for that



reason that the Appellant could not appear.

5. However, Id. Counsel for the Respondent submits that the Appellant has been deliberately delaying the adjudication of the suit by filing repeated applications one after the other.

6. In fact, it is her submission that the counter claim of the Appellant has been dismissed in default on three occasions earlier as well.

7. On 8th September, 2025, notice was issued in the present appeal and Court had directed to requisition the TCR.

8. A perusal of the TCR would show that the initial suit being **CS DJ 239/2018** titled '**M/s Gold Square Sales Pvt. Ltd. vs Shri Naresh Kumar Anand**' was filed by the Respondent in March 2018, seeking recovery of Rs.36,27,302/- along with interest at 18% per annum.

9. In the said suit, the Appellant filed a counter claim being **CS No. 846/18** titled '**Shri Naresh Kumar Anand v. M/s Gold Square Sales Pvt. Ltd**' against the Respondent seeking recovery of Rs. 10,65,826/- on the ground of delayed payments and outstanding dues.

10. The suit is stated to be pending before the Civil Judge and the counterclaim has been transferred to the Commercial Court.

11. The Respondent has already filed the evidence in the suit. From 2020 onwards, the counterclaim is being considered by the Commercial Court. However, the Appellant's evidence has not been led.

12. Repeated adjournments have been taken on various dates including on 27th January, 2020, 14th September, 2020, 13th December, 2020.

13. On 20th March, 2021 in **CS No. 846/18**, one last opportunity was granted to the Appellant to lead the evidence.

14. In disregard of the directions passed by the Id. Trial Court, the



Appellant did not appear. On 28th May, 2022, the Court dismissed the counterclaim in default for non-prosecution. The said order reads as under:

“The ld. Counsel for the respondent has filed the vakalatnama. The AR of the counter-claimant has been directed to remain present vide orders dated 31.01.2022 as well as 20.03.2021 and a last opportunity had been accorded to the counter-claimant for adducing evidence but neither the AR has cared to appear nor any evidence has been led by the counter-claimant till date although the issue in the present matter was framed on 15.12.2018. In these circumstances, the counter-claim is hereby dismissed in default and for non-prosecution. File be consigned to record room after necessary compliance.”

15. Thereafter, the Appellant filed an application under Order IX Rule 9 CPC. By order dated 2nd February, 2024, the said application was allowed, and the counterclaim was restored to its original number. The said order reads as under:

“Arguments addressed on application under Order 9 Rule 9 CPC. It is submitted that the main suit as well as counter claim were pending before Ld. ADJ Court, however, after the Commercial Courts were created, the counter claim was transferred to the Commercial Court, whereas main suit remained pending before Ld. ADJ Court. The applicant got to know about the transfer of the counter claim in September 2022, by which time, the counter claim had been dismissed in default and for want of prosecution.

It is submitted by counsel for respondent that applicant had been regularly appearing in the other matter and in these circumstances, how he did not get to know about the transfer of the counter claim, to which, counsel for



applicant/counter claimant submits that he was under the impression that his counter claim is also pending in the same court and his attendance is being marked in both the cases. It is only in September 2022 that he got to know about transfer of the counter claim by which time, counter claim had already been dismissed. Thereafter he immediately moved application under Order 9 Rule 9 CPC.

Considering the above submission of Ld. Counsel for applicant, application under Order 9 Rule 9 CPC stands allowed. Counter claim is restored back to its original number and position.

Since as already noted, main suit is pending in other court, sometime is requested by Ld. Counsel for applicant/counter claimant to move appropriate application before Ld. Principal District & Sessions Judge, South, Saket Courts, Delhi, with request for clubbing of both the matters.

Be put up for further proceedings on 23.02.2024. On joint request, date is changed to 14.03.2024.”

16. In terms of the above order, the Court had noted that the Appellant’s counter claim was transferred to the Commercial Court, post creation of Commercial Courts, while the main suit remained pending before the Id. ADJ. It was also noted that the Appellant acquired knowledge about the same in September, 2022. Accordingly, the Appellant’s counter claim was restored. Further, the Court had also directed the Appellant to file an application for clubbing both the matters.

17. However, on 1st April, 2024, none appeared on behalf of the Appellant, and no application seeking clubbing of the matters, as directed in the previous



order, had been filed.

18. Upon the matter being taken up in the second call, the counterclaim was again dismissed for non-prosecution. The order dated 1st April, 2024 reads as under:-

“Counsel for respondent was present at first call and submitted that no application had been moved by the applicant/counter-claimant in terms of previous directions. None has rather appeared on behalf of application/counter-claimant on previous call as well as on the second call, hence matter stands dismissed in default.

File be consigned to record room.”

19. The Appellant again moved an application under Order IX Rule 9 of CPC, citing death of the previous Counsel as a reason for non-appearance. The said application was allowed vide order dated 16th May, 2025, which is set out below:

“Arguments addressed on the application U/o 9 Rule 9 CPC.

Previously, also the matter had been dismissed in default and the application U/o 9 Rule 9 CPC was allowed. Applicant had sought time to move appropriate application before Principal District & Sessions Judge (South) with request for clubbing of both the matters, since, it was brought on record that the regular matter was pending in another Court, whereas, counter-claim was pending before this Court. Thereafter, none had appeared for the applicant. Hence, the matter was again dismissed in default. It was later on submitted that non appearance in the matter was due to demise of the previous counsel and subsequently, due to no information having been received from the office of previous counsel. Considering the said submission by



taking lenient view, application U/o 9 Rule 9 CPC is allowed.

It may be noted that the counter-claim pending before this Court shall be one of the oldest cases before this Court warranting expeditious disposal. Counsel for applicant shall take appropriate steps for clubbing of both the matters at the earliest. It is made clear that longer dates would not be permitted for any reasons. Be put up for further proceedings on 20.05.2025.

20. On 20th May, 2025, the Court was informed that the Appellant is seeking some time to file the application for clubbing of matters. The Court also observed that the Appellant may consider withdrawing the said counterclaim. Accordingly, an adjournment was sought.

21. Thereafter, on 5th June, 2025, the Appellant failed to appear, despite repeated calls and accordingly, the counter claim was dismissed for want of prosecution by the said order. The order dated 5th June, 2025 is set out below:

“Application U/o 9 Rule 9 CPC moved by counterclaimant had been allowed. However, it was noted that counterclaim pending before this Court is one of the oldest cases warranting expeditious disposal. Ld. Counsel for counter-claim sought time to take appropriate steps for clubbing of both the matters. Steps thereafter had not been taken despite opportunity permitted. It was rather submitted by counter-claimant that they shall consider withdrawal of the counter-claim for which consideration, adjournment was requested. Today, none has appeared. Counter-claim stands dismissed in default and for want of prosecution. File be consigned to record room.”

22. In respect of the third dismissal, the Appellant filed an application under Order IX Rule 9 of CPC on the ground that the incorrect date was noted



and the same was a clerical mistake.

23. The aforesaid application was dismissed *vide* the impugned order dated 2nd July, 2025. Hence, the present appeal.

24. Ld. Counsel for the Respondent submits that the evidence in the main suit was filed by the Respondent way back on 16th December, 2023.

25. Thereafter, an application under Order VII Rule 10 of the CPC was filed by the Appellant seeking dismissal of the suit. The said application was dismissed on 25th August, 2025 by the Trial Court.

26. The Appellant then filed a revision petition assailing the order dated 25th August, 2025, being ***C.R.P. 319/2015*** titled '***Naresh Kumar Anand v. M/s Gold Square Sales Pvt. Ltd.***'.

27. *Vide* order dated 17th November, 2025 in ***C.R.P. 319/2015***, the Court had directed as under:

"1. The petitioner, who is the defendant in CS DJ 239/2018 pending before the Court of the learned District Judge-03, South District, Saket Court, has challenged an order dated 25.08.2025, by which his application under Order VII Rule 10 of the Code of Civil Procedure, 1908, was dismissed.

2. The petitioner has sought return of the plaint to the respondent– plaintiff on the ground of lack of territorial jurisdiction.

3. After some hearing, Mr. Abhay Chitravanshi, learned counsel for the petitioner, seeks permission to withdraw this revision petition, without prejudice to the petitioner's rights and contentions before the Trial Court, including the right to seek framing of an additional issue on the question of jurisdiction.

4. The revision petition, alongwith pending



applications, is dismissed as withdrawn, with liberty as aforesaid.

5. It is made clear that this Court has made no observation on the merits of any remedy that may be sought by the petitioner before the Trial Court.”

28. Further, Id. Counsel for the Respondent submits that the issue on territorial jurisdiction was already framed.

29. However, after the order dated 17th November, 2025 passed in the revision petition, the Appellant moved another application under Order XIV Rule 5 of CPC seeking framing of an additional issue on territorial jurisdiction and for considering the same as a preliminary issue. The said matter is also continuing to be adjourned.

30. Heard the Id. Counsel for the parties. The Court has considered the matter and perused the records. The chronology of events would show that the Appellant has not been diligent in pursuing the counterclaim.

31. In fact, over the last eight years, the counterclaim has been dismissed on three separate occasions.

32. The Appellant has repeatedly sought restoration of the counterclaim by filing successive applications, resulting in considerable delay in the adjudication of the proceedings.

33. Moreover, on each occasion, the Appellant has sought restoration by attributing the default to one reason or another. On previous occasions, the explanation pertained to the difficulty by the Id. Counsel, whereas on the present occasion, the explanation is the erroneous noting of the date of hearing by the Id. Counsel.

34. *Vide* the impugned order, the Trial Court has observed as under:



“[...]10. Again after lapse of more than seven months, another application under Order 9 Rule 9 CPC was moved on 28.11.2024 and the ground for non appearance was mentioned as due to demise of the previous counsel and subsequently due to no information having been received from the office of the previous counsel. By taking lenient view, application under Order 9 Rule 9 CPC was allowed vide order dated 16.5.2025. Parties were informed that the counter claim pending before this court shall be one of the oldest cases, warranting expeditious disposal. Counsel for applicant sought time to take appropriate steps for clubbing of both the matter at the earliest. It was made clear to the parties that longer dates would not be permitted. Despite that, requisite steps were not taken by applicant and further opportunity was sought to move appropriate application. It was also stated that applicant may consider withdrawal of the counter claim for which consideration also, some time was requested. Matter was fixed up for further proceedings on 04.06.2025 and on the request of counsel for applicant himself, date was changed to 05.06.2025. Counsel for applicant was also informed that if steps were not taken by next date of hearing, necessary consequences shall follow.

11. On next date of hearing i.e. 05.06.2025, which was given as per the request of the counsel for applicant himself, none appeared. Hence, the counter claim for the third time was dismissed in default and for want of prosecution. Submission of Ld. counsel for applicant that to ascertain the exact status of the matter and to verify whether the next date of hearing was correctly noted as 06.06.2025, he had checked the official online portal and found that no order after 01.04.2024 had been uploaded on the online portal is not only misplaced but is contrary to the factual position. Date was not only given in the presence of counsel for



applicant but was changed to 05.06.2025 on his specific request. All the orders are duly, regularly are uploaded on the same date. Confirmation was sought from the Reader of the court who confirmed the same and also placed on record the status with regard to uploading of the orders which was on the same date of pronouncement of the orders. Besides that, date of hearing is always notified on the registered mobile number of the counsel. Yet, counsel for applicant has audacity to furnish false submissions on record. Besides that, when the date was given in presence of counsel for applicant, there was no occasion or reason with this court to change the date in the absence of counsel for parties, therefore, there was no occasion even for the counsel for applicant to check whether any change in the hearing date had been ordered by the court.

12. Conduct of the applicant, as noted above, indicates callous attitude intelligent approach which led to dismissal of the counter claim on three occasions. Even the lenient view taken by this court in allowing the previous applications seem to have been mis-utilized by the applicant. Conduct of applicant does not warrant any further lenient view to be taken in the matter and rather this court is restraining itself from imposition of the heavy cost upon the applicant considering the conduct of the applicant and also the audacity to mention the false submission on court record. Instant application accordingly stands dismissed. File be consigned to record room after completion of necessary formalities.”

35. In the overall analysis of the proceedings, it is clear that substantial judicial time has been spent on account of the suit and the counterclaim being heard in two different Courts.

36. The Appellant has repeatedly failed to pursue the counterclaim



diligently, resulting in its dismissal on three occasions.

37. The Appellant has also caused delays by filing applications seeking consideration of the issue of territorial jurisdiction as a preliminary issue, despite the said issue having been framed way back, *vide* order dated 18th November, 2022. The relevant portion of the said order is set out below:

“Affidavit of admission denial of documents filed. Be taken on record. Copy supplied to Ld. Counsel for Defendant. On completion of pleadings, the following issues were framed:

a) Whether this court has territorial jurisdiction to try and adjudicate the present suit? OPD.

b) Whether the present suit has been filed without any cause of any action?OPD

c) Whether the Plaintiff is entitled to recovery of Rs. 36,27,302/- from the Defendant?

d) If issue no. (c) is decided in affirmative, at what rate and for what period? OPP.

e) Relief.

No other issue either arises or is pressed. List of witnesses and affidavits along with documents to be filed within two weeks from today. The plaintiff is directed to supply advance copy of affidavits to the opposite party. Put up for PE on 07.02.2023.”

38. Furthermore, no attempt was made by the Appellant to have both the proceedings *i.e.*, the counter claim and the main suit be clubbed, by availing of appropriate remedies under Section 24 of the CPC.

39. It is seen that on the one hand the suit is being adjudicated before the



District Judge and the counter claim stands dismissed, merely on default and not on merits. The suit was filed way back on 7th March, 2018 and the counter claim was initially filed on 4th September, 2018. Both sides are suffering due to the recalcitrant conduct of the Appellant.

40. Considering that the main suit and the counter claim have remained pending before the different Courts since 2018 and have not yet been considered on merits, the Court is of the view that the counter claim shall be restored and heard on merits.

41. Accordingly, this Court is of the view that this is fit case to exercise powers under Section 24 of CPC.

42. Under these circumstances, in order to ensure the efficient and expeditious disposal of the entire dispute and to avoid any further delays, the following directions are issued:

- i) The counter claim being **CS No. 846/18** titled **Shri Naresh Kumar Anand v. M/s Gold Square Sales Pvt.** is restored to its original number.
- ii) In exercise of powers under Section 24 CPC, the civil suit being **CS DJ 239/2018** titled '**M/s Gold Square Sales Pvt. Ltd. vs Shri Naresh Kumar Anand**' shall now stand transferred to the District Judge Commercial Court 01, South Saket Courts, New Delhi where the counterclaim of the Appellant being **CS No. 846/18** titled **Shri Naresh Kumar Anand v. M/s Gold Square Sales Pvt. Ltd** was being adjudicated. The proceedings shall henceforth be governed by the Commercial Courts Act, 2015.
- iii) Issues have already been framed in the suit as well as in the counterclaim, and the matter is now at the stage of leading evidence.



The Respondent has already filed affidavits by way of evidence. However, the Respondent, being the Plaintiff in the suit, is permitted to file fresh affidavits by way of evidence in both the suit and the counterclaim. Similarly, the Appellant, being the Defendant in the suit and the counterclaimant, shall file common affidavits by way of evidence in both the suit and the counterclaim.

iv) The said affidavits shall be exchanged between the parties within four weeks from the date when the matter is first listed before the Commercial Court.

v) The witnesses shall lead common evidence in both the suit and the counterclaim.

vi) After leading of common evidence, all the issues framed in the suit as also in the counterclaim shall be adjudicated comprehensively together.

43. Since the counterclaim has already been dismissed and considering the past conduct of the Appellant, who has been negligent in pursuing the counterclaim, as a condition for restoration of the counterclaim and for permitting evidence to be led, it is directed that the counterclaimant shall deposit a sum of Rs.5,00,000/-.

44. Out of the said deposit, Rs.50,000/- shall be treated as costs and paid to the Respondent.

45. The remaining sum of Rs.4,50,000/- shall be kept in a Fixed Deposit Receipt with the Commercial Court and shall abide by the final adjudication of the suit.

46. The present appeal is disposed of in these terms. Pending applications, if any, are also disposed of.



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47. Parties to appear before the Commercial Court *i.e.*, District Judge Commercial Court 01, South Saket Courts, New Delhi on 5th August, 2026.

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

JULY 13, 2026/MR/SM