

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : April 21, 2009

Pronounced on : April 29, 2009

+ **FAO(OS)340-341/2005**

M/S RAJ & ASSOCIATES & ANR.

... Appellants

Through : None

Versus

VIDESH SANCHAR NIGAM LIMITED & ANR. ... Respondents

Through : Mr. Rishi Aggarwal, Mr. Ankit Shah,
Ms. Rohma Hameed and Mr. B.S.Shukla, Advocates

CORAM:

HON'BLE MR. JUSTICE MUKUL MUDGAL

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes

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JUDGMENT

VALMIKI J. MEHTA, J.

1. This appeal challenges the order dated 18th July, 2005 of the learned Single Judge whereby the learned Single Judge has directed the transfer of suit to the District Court in view of the value of the pecuniary jurisdiction of the suit being only Rs.9,70,417/- that is less than Rs. 20 lacs which is the minimum amount at

which a suit has to be valued for pecuniary jurisdiction to enable filing of the suit in the original side of this court.

2. The contention of the counsel for the appellant is that though, the suit will have to be taken as valued at Rs.9,70,417/- and which is the amount of which recovery is sought in the present suit, he contends that the defendant No. 1 had filed a counter claim and the valuation of which counter claim being Rs. 30,14,256/- consequently, the valuation being such that it is within the pecuniary jurisdiction of this Hon'ble Court such counter claim has been directed to be tried by this Hon'ble Court.

3. The issue therefore is that when the valuation of a suit plaint is less than the pecuniary jurisdiction as required for filing a suit in this court, is the suit liable to be transferred to the appropriate court of pecuniary jurisdiction or has the suit plaint to be retained in this court and be consolidated with the counter claim filed by the defendant No.1. We are of the view that the present appeal deserves to be allowed for the reasons stated hereinafter.

4. Order 8 Rule 6-A of the Code of Civil Procedure, 1908 reads as under :-

“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.”

5. Reading of sub-Rule 2 of Order 8 Rule 6-A clearly shows that *a final judgment* has to be pronounced by the court on both the original suit claim and the counter claim filed in such suit. Clearly therefore, a common judgment can only be passed if both the suit and the counter claim are heard and disposed of together. The legislative intention is therefore clear that the suit and the counter claim have to be tried by the same court. The object is to give a quietus with respect to the suit claim and the counter claim which are related to each other so as to finally bind the parties with respect to all the connected issues by a common judgment.

6. It is also inherent in sub-Rule 2 of Order 8 Rule 6-A that the object of this rule is to avoid conflicting judgments by different courts on common issues which may arise between a suit and the counter claim and which can happen if the suit claim and the counter claim are heard separately by different courts. The intendment with respect to applicability of the principles for consolidation

of suits is inbuilt in sub-Rule 2 of Order 8 Rule 6-A and which intention of the legislature becomes further clear when we refer to Rule 6-C of Order 8. Ordinarily, a suit claim and the counter claim relate to the same subject matter and inter-related causes of action and therefore are best disposed of by hearing and disposing of both the suit and the counter claim together, however, it is not necessary that the subject matter and causes of action of the counter claim and the suit claim may be so inextricably interlinked and in such case it is open to the court under Rule 6 of Order 8 to separate the trials of suit and the counter claim. The spirit of Order 8 Rule 6-C is in accordance with Order 2 Rule 6 of the CPC which allows a court to direct separate trials when there is misjoinder of various causes of action in one suit on the ground that there may be embarrassment or delay in the trial of one cause of action because of its misjoinder with it or another cause of action.

7. We are supported in the view which we are taking that it is necessary for one court only to deal with both the suit claim and the counter claim together and dispose of the same in a common judgment, by three judgments of three different High Courts reported in **T. K. V. S. Vidyapoornachary Sons and others, v. M. R. Krishnamachary, AIR 1983 Madras 291, Barthels and Luders GmbH, v. M.V. "Dominique", AIR 1988 Bombay 380 and Shri Amrit Lal Basumatari, Recrimination v. Shri Abdul Muhib Mazumdar and others, AIR 1991 Gauhati 85.**

8. In the first judgment, the Madras High Court in the case of **T. K. V. S. Vidyapoornachary Sons and others, v. M. R. Krishnamachary**, AIR 1983 Madras 291, (Balasubrahmanyam, J, as he then was) has held in para 6 of the judgment as under :

“.....Nevertheless, in its most operative provision, it lays down that the Court shall pronounce a single judgment in the suit, both on the original claim and on the counterclaim. The susceptibility of a counterclaim to be dealt with in a single judgment along with a suit claim, runs counter to the idea of the two being regarded as things apart. It is not merely that the Code provides for a single judgment to dispose of, at one stroke, the suit claim as well as a counter-claim, like hitting two birds with one stone. But R.6-C specifically lays down a special procedure to separate the suit claim from the counter-claim, wherever the separation is called for. This provision emphasises by implication that as a general rule a suit claim and a counter-claim ought properly to be regarded as constituting a unified proceeding. The rule, however, makes for an exception, and it is this; should the plaintiff in a given case desire that the counter-claim filed by the defendant in answer to his suit claim be dealt with as a separate suit in itself, he ought to apply for that relief before the trial Court and it should be done before the issues are settled. On his application for amending his suit claim and the counter-claim, the court will have to consider whether the counter-claim should be dealt with as part and parcel of the suit or whether the defendant should be referred to a separate suit. These exceptional provisions in Rule 6-C only illustrate the homogeneity of the suit claim and the counter-claim as a single proceeding.”

9. In the next case, the Bombay High Court in **Barthels and Luders GmbH, v. M.V. "Dominique"**, AIR 1988 Bombay 380 speaking through Sujata Manohar, J (as she then was) has held in paragraph 6 of the judgment as under :

“.....Under Order 8, R.6A of the Code of Civil Procedure a defendant in a suit may 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. The proviso set out that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court. Under O.8, R.6, therefore, once a suit has been filed the defendant can set up by way of counter-claim any right or claim against the plaintiff which arises before the defendant has delivered his defence or before the time limited for delivering his defence has expired. This counter-claim may be a claim in the nature of damages also. The only restriction as set out in the provision is that the counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court. There is no restriction regarding territorial jurisdiction of the court.

This is because the suit and the counter-claim are in many ways not two independent proceedings but a united proceeding. Although O.8, R.6A provides that the counter-claim is to be treated as a plaint and is to be governed by the rules applicable to plaints, it is not to be treated as a completely separate suit. In fact under O.8, R.6A sub-rule (2) the counter-claim is to be treated as a cross-suit so as to enable the Court to pronounce a final judgement in the same suit, both on the original claim and on the counter-claim, so that both the proceedings can be disposed of by a common judgement.”

10. In the third judgment of the Guwahati High Court in **Shri Amrit Lal Basumatari, Recrimination v. Shri Abdul Muhib Mazumdar and others**, **AIR 1991 Gauhati 85**, a learned Single Judge of the said court (Manisana, J) has held in paragraph 5 of the judgment as under :

“...Under O. 8, R. 6-A of the Code, counter-claim shall have the 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, and the counter-claim shall be treated as a plaint and shall be governed by the rules applicable to plaints. Therefore, under R.6-A the claim and counter-claim

are to be regarded as a unified proceeding and the same are to be disposed of by a single judgment, both on the original claim and counter-claim.....”

11. It is therefore clear that various High Courts have held, which view we adopt that both the claim and the counter claim have to be disposed of together in consolidated proceedings ending with a common judgment.

12. Accordingly, we set aside the impugned order of the learned Single Judge dated 18th July, 2005 and direct that both the suits namely Suit No.2380/2000 titled as M/s. Raj & Associates and Another v. Videsh Sanchar Nigam Ltd. and Another and the counter claim No.23/2005 filed in the said suit are consolidated. Both the suit No.2380/2000 and the counter claim No.23/2005 shall be heard together in the original side of this court and be disposed of by a common judgment. Parties to appear before the Judge In-charge original side for assignment to an appropriate court on 12th May, 2009.

VALMIKI J. MEHTA, J

MUKUL MUDGAL,J

APRIL 29, 2009
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