

GAHC010135462023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/194/2023

M/S AADHAR

A PARTNERSHIP FIRM, HAVING ITS REGISTERED OFFICE, SITUATED AT
PIYALI PHUKAN ROAD, NAWRAM KAKATI PATH, REHABARI, GUWAHATI,
P.O.-REHABARI, P.S.-PALTANBAZAR, DIST-KAMRUP (M), ASSAM, PIN-
781008, HEREIN REPRESENTED ITS PARTNER, SMT. PURNASHREE DAS,
W/O SRI JYOTI PRAKASH DAS, AGED ABOUT 39 YEARS, R/O REHABARI,
GUWAHATI, P.O.-REHABARI, P.S.-PALTANBAZAR, DIST-KAMRUP (M),
ASSAM, PIN-781008

VERSUS

AJIT DEB AND ANR

S/O LATE KAMADA RANJAN DEB, R/O C/O RUMA PYNE, S.C. ROAD,
KUMARPARA, GUWAHATI, DIST-KAMRUP (M), ASSAM, PIN-781001

2:SMT. RITA PYNE

W/O SRI AJIT DEB

R/O C/O RUMA PYNE

S.C. ROAD

KUMARPARA

GUWAHATI

DIST-KAMRUP (M)

ASSAM

PIN-78100

Advocate for the Petitioner : MR. B K JAIN

Advocate for the Respondent : N CHAUDHURY (R-1,2)

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 25-09-2023

1. Heard Mr. B.K. Jain, learned counsel for the petitioner as well as Mr. B.D. Deka, learned counsel for the respondent No.1 and 2, who had entered appearance in the matter by stating that he is the learned counsel appearing for them before the learned trial Court.

2. By this application under Article 227 of the Constitution of India, the petitioner has assailed the order dated 11.04.2023 passed by the learned Civil Judge No.3, Kamrup (M), Guwahati in Title Suit No.413/2022 thereby rejecting the prayer made vide petition No.1991/2023 dated 11.04.2023, thereby rejecting the prayer of the petitioner, who is the defendant No.1 in the said suit for granting extension of time for one week to file counter claim.

3. The learned counsel for the petitioner has referred to the contents of the petition filed before the learned trial court on 04.02.2023 and had submitted that time was prayed for filing counter claim and it has been mentioned therein that the cause of action for the counter claim had also arisen before filing of the written statement. It is submitted that on 11.04.2023 a prayer for adjournment was made as the defendant No.1/petitioner was suffering from various ailments for which he was undergoing treatment under the care and supervision of a doctor and the defendant No.1/petitioner was advised to take complete rest for a week.

4. The learned counsel for the respondent has submitted that there was an inordinate delay in filing of the written statement for which the right of the petitioner to file written statement was closed. However, this Court, by order dated 03.02.2023 passed in CRP (IO) 29/2023 allowed the petitioner to file his written statement. Accordingly it is submitted that the counter claim ought to have been filed along with the written statement.

5. It would be appropriate to refer to paragraph 21 of the case of *Ashok Kumar Kalra Vs. Wing Commander Surendra Agnihotri and Others*, reported in (2020) 2 SCC 394, where a 3-Bench of the Supreme Court of India, after considering various contents on the issue of counter claim had summarized its finding as under:

21. We sum up our findings, that Order VIII Rule 6A of the CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

i. Period of delay.

ii. Prescribed limitation period for the cause of action pleaded.

iii. Reason for the delay.

iv. Defendant's assertion of his right.

v. Similarity of cause of action between the main suit and the

counterclaim.

vi. Cost of fresh litigation.

vii. Injustice and abuse of process.

viii. Prejudice to the opposite party.

ix. and facts and circumstances of each case.

x. In any case, not after framing of the issues.

6. In the opinion of this Court, the trial court would not have power to extend the time for filing of counter claim as the cause of action for the counter claim is not relatable to the filing of written statement.

7. In the case of *Ashok Kumar Kalra (supra)*, the Supreme Court of India has laid down that the provisions of Order VIII Rule 6A CPC does not put an embargo on filing of the counter claim after filing of the written statement by further holding that the restriction is only with respect to the cause of action and it has also been clarified that the said provision does not give an absolute right to the defendants to file counter claim in substantive delay, even if the limitation period prescribed has not elapsed.

8. Accordingly, in so far as the impugned order dated 11.04.2023 is concerned, the Court does not find any jurisdictional error committed by the learned trial court to refuse extension of time to file written statement.

9. Nonetheless, be that as it may, in view of the law laid down by the Supreme Court of India in the case of *Ashok Kumar Kalra (supra)*,

it is only when the counter claim is presented before the learned trial court, the said learned court would have the discretion to pass an order of whether or not to entertain the counter claim after taking into consideration and evaluating the factors as laid down in paragraph 21 of the said judgment which is already quoted herein above. It would be now relevant to quote paragraph 31 and 60 of the said judgment.

31. From the foregoing discussion, it is clear that a counter claim can be filed if two conditions are met: first, its cause of action complies with Order VIII Rule 6A(1); and second, it is filed within the period specified under the [Limitation Act](#). Clearly, by itself, Rule 6A does not specifically require that a counterclaim has to be filed along with the written statement. In the absence of a particular mandate under this Rule, it is necessary to look to other provisions of the CPC to determine whether a counterclaim can be filed after a written statement.

60. Having considered the previous judgments of this Court on counterclaims, the language employed in the rules related thereto, as well as the intention of the Legislature, I conclude that it is not mandatory for a counterclaim to be filed along with the written statement. The Court, in its discretion, may allow a counterclaim to be filed after the filing of the written statement, in view of the considerations mentioned in the preceding paragraph. However, propriety requires that such discretion should ordinarily be exercised to allow the filing of a counter claim till the framing of issues for trial. To this extent, I concur with the conclusion reached by my learned Brothers. However, for the reasons stated above, I am of the view that in exceptional circumstances, a counterclaim may be permitted to be filed after a written statement till the stage of commencement of recording of the evidence on behalf of the plaintiff.

10. In view of the discussions hereinabove and considering the law

laid down in the case of *Ashok Kumar Kalra (supra)*, while not entertaining the challenge to the impugned order dated 11.04.2023 passed by the learned Civil Judge No.3, Kamrup (M) Guwahati, passed in Title Suit Case No.413/2022, Court is inclined to provide that if any counter claim is filed by the petitioner, entertainability of the same shall be considered in terms of the ratio laid down in the case of *Ashok Kumar Kalra (supra)*.

11. This revision petition stands disposed of in the motion stage without issuing notice on the respondents.

JUDGE

Comparing Assistant