

GAHC010136022023



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

Case No. : CRP(IO)/186/2023

AMAN JINDAL AND 2 ORS.

S/O- SRI RAM PRASAD AGARWAL (JINDAL), R/O- CHIRWAPATTY ROAD,
TINSUKIA TOWN, P.O., P.S. AND DIST. TINSUKIA, ASSAM, PIN- 786125.

2: RAHUL JINDAL

S/O- SRI RAM PRASAD AGARWAL (JINDAL)

R/O- CHIRWAPATTY ROAD

TINSUKIA TOWN

P.O.

P.S. AND DIST. TINSUKIA

ASSAM

PIN- 786125.

3: ROHIT JINDAL

S/O- SRI RAM PRASAD AGARWAL (JINDAL)

R/O- CHIRWAPATTY ROAD

TINSUKIA TOWN

P.O.

P.S. AND DIST. TINSUKIA

ASSAM

PIN- 786125

VERSUS

M/S DAYAL ENTERPRISES AND 3 ORS.

A PARTNERSHIP FIRM OF THE DEFENDANTS NO. 2, 3 AND 4, SITUATED AT
S.R. LOHIA ROAD, TINSUKIA TOWN, P.O., PS. AND DIST. TINSUKIA,
ASSAM, PIN- 786125.

2:RAJENDRA PRASAD CHOUDHURY

S/O- LATE SATYANARAYAN CHOUDHURY

R/O- CHALIHA NAGAR

TINSUKIA TOWN

P.O.

P.S. AND DIST. TINSUKIA
ASSAM
PIN- 786125.

3:RAVI CHOUDHURY
S/O- SRI RAJENDRA PRASAD CHOUDHURY
R/O- CHALIHA NAGAR
TINSUKIA TOWN
P.O.
P.S. AND DIST. TINSUKIA
ASSAM
PIN- 786125.

4:VISHAL CHOUDHURY
S/O- SRI RAJENDRA PRASAD CHOUDHURY
R/O- CHALIHA NAGAR
TINSUKIA TOWN
P.O.
P.S. AND DIST. TINSUKIA
ASSAM
PIN- 786125

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE
Advocate for the Respondent : MS P AGARWAL (R-1 to 4)

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners : Mr. B. Dutta,
Senior Advocate.

For the Respondents : Ms. P. Agarwal,
Advocate.

Date of Hearing : 22.08.2023.

Date of Judgment : 29.08.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. B. Dutta, learned senior counsel appearing for the petitioners. Also heard Ms. P. Agarwal, learned counsel representing the

respondents.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 19.05.2023 passed by the learned Munsiff, Tinsukia in T.S. Case No.37/2015.

3. The factual matrix leading to this filing of Revision Petition lies within a very short campus. The question involved in this Revision Petition is as to whether after framing of issues, a counter-claim can be filed.

4. After framing of issues, the defendants filed a counter-claim. The plaintiffs, therefore, filed an application under Order VIII Rule 6C of the Code of Civil Procedure for exclusion of the counter-claim. The trial court did not agree with the plaintiffs.

5. I have considered the submissions made by the learned counsels of both sides.

6. Order VIII Rule 6A provides for filing of counter-claim by the defendants.

7. In *Ashok Kumar Kalra v. Surendra Agnihotri*, (2020) 2 SCC 394, the Supreme Court has held as under:

“21. We sum up our findings, that Order 8 Rule 6-A 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 defendants 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) Defendants' 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."

8. In the case in hand, issues are already framed. Therefore, at this stage a counter-claim cannot be filed by the defendants in the suit.

9. The learned trial court committed error by allowing the defendants to file their counter-claim after framing of issues. The impugned order is set aside accordingly. The counter-claim filed by the defendants after framing of issues, shall not be taken into consideration while trying the suit.

The Revision Petition is allowed and disposed of.

Send back the LCR.

JUDGE

Comparing Assistant