

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

CRP.No. 527 of 2010

**AGAINST THE ORDER IN I.A. NO.2416/2009 IN OS 431/2007 of PRINCIPAL MUNSIF
COURT, KOCHI DATED 18-08-2010**

REVISION PETITIONER(S)/PETITIONERS/DEFENDANTS:

1. XAVIER, S/O.VAREED, CHERIYAKADAVU,
NOW RESIDING AT KIZHAVANA ROAD, PANAMPILLY NAGAR
ERNAKULAM, KOCHI-682036.
2. JOHN, S/O.VAREED, KATTIKATTU HOUSE,
KONTHURUTHY, KOCHI-682013. (P.A.HOLDER) (DIED)
3. PETER, S/O.VAREED, RESIDING KATTIKATTU
HOUSE, KONTHURUTHY, KOCHI-682013.
4. MARY, D/O.VAREED, KANNANKERIL HOUSE,
KUMBALANGHI, KOCHI-683007.
5. CICILY, W/O.LATE KATTIKATTU JACOB,
RESIDENT OF AVOLI P.O., MOOVATTUPUZHA VILLAGE.
6. JACIN, S/O.LATE KATTIKATTU JACOB,
RESIDENT OF AVOLI P.O., MOOVATTUPUZHA VILLAGE.

**(PETITIONERS 1 AND 3 TO 6 ARE REPRESENTED BY POWER OF ATTORNEY HOLDER
FOR P2)**

**ADDL.P7. GEO JOHN,
 S/O. LATE K.V. JOHN,
 RESIDING AT KATTIKATT HOUSE,
 KONTHURUTHY, KOCHI - 682 013.**

**(ADDL. 7TH PETITIONER IS IMPEADED AS THE LEGAL REPRESENTATIVE OF THE
DECEASED 2ND PETITIONER VIDE ORDER DT. 23.09.2014 IN I.A.2254/2014 IN CRP
527/10)**

**ADDL. P7 BY ADV. SRI.ROY CHACKO
P1, P3 TO P6 BY ADV. SRI.P.S.GEORGE**

CRP No. 527 of 2010

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

**MARUVAKKAD PADASEKHARA KARSHAKA UNION,
REG.NO.ER-42/1975, MARUVAKKAD, CHELLANAM P.O.
COCHIN-682008 REPRESENTED BY ITS PRESIDENT.**

**BY ADV. SRI.N.N.SUGUNAPALAN (SR.)
BY ADV. SRI.S.SUJIN**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
14-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

C.R.P. No. 527 of 2010

Dated this the 14th day of July, 2015

ORDER

This revision petition is directed against the order dated 18.08.2010 in I.A.No. 2416/2009 in O.S.No. 431/2007, whereby, the court below refused to entertain a counter claim filed by the petitioners before this Court.

2. The facts absolutely necessary for the purpose of disposal of this revision petition are as follows:

The respondent-plaintiff is a registered union consisting of 211 members who own a vast extent of 'nilam' comprising of 395.97 acres. The plaintiff would say that they purchased plaint schedule property having an extent of 49.03 acres as per document No. 4673/75 dated 31.07.1995 of S.R.O., Kochi. The plaint schedule property consists of outer bunds, thodu and vachals which are essential for paddy and prawn cultivation done by the members of the union. The plaintiff alleged that the defendants have no

manner of right and interest over the plaint schedule property. The defendant and other members of his family are having 14.5 acres of land which is situated far away from the plaint schedule property. It is pointed out by the plaintiff that there was a suit between the defendant and his family members as O.S.No. 151/77 before the Sub Court, Kochi. Alleging that the defendants, without any manner of right whatsoever are trying to trespass into the plaint schedule property and trying to cut open the bund and conduct fishing operation, the suit was laid.

3. The defendants resisted the suit by pointing out that there was no outer bund earlier and the major portion of the outer area belonged to Devaswom who was the Jenmi of the property. The defendants claimed that their property lies on the north-eastern extremity of the entire 445 acres of paddy land. On the eastern side of the said paddy field, there is a chal. The lessees of the property, in order to protect their paddy field for cultivation, constructed

varambas around their paddy field. Devaswom, who was the Jenmi of the property, was reluctant to maintain the outer bunds which comes in their possession. That resulted in the cultivators making a request to the Devaswom to let them renovate the bunds. After obtaining the consent of the Devaswom, the cultivators renovated and strengthened the outer bund of the Devaswom properties as well as the bunds of the tenants. It was contended by the defendants that the plaintiff has no right over the bunds which are lying on the boundaries of the properties possessed by the cultivating tenants. The plaintiff filed a suit in respect of prawn farming during the period 2003-2004 as O.S.19/2004 and in that suit, the question of res-judicata was raised and the said issue was heard as the preliminary issue. It was held in favour of the defendants and the suit was dismissed.

4. The defendants alleged that no appeal was filed by the plaintiff against the decree in O.S.No.19/2004. Long thereafter the present suit has been laid. The defendants

reiterated the question of res-judicata in the present suit also and pointed out that plaintiff is not entitled to any relief. In the present suit, the court below raised two preliminary issues; they are (1) whether the suit is barred by Section 11 of C.P.C. and (2) whether the plaint claim is barred by estoppel.

5. The trial court, after going into the question, found that the present suit is not barred by res-judicata and the principle of estoppel was left open to be decided at the final hearing of the suit.

6. Thereafter, the defendants filed I.A.No. 2416/2009 on 18.12.2009 pointing out that in the light of the rejection of their prayer that the suit being barred by res-judicata and estoppel, it has become necessary for them to raise a counter claim. They therefore sought to amend the written statement pointing out that cause of action for counter claim has arisen on 11.3.2009.

7. To the amendment so sought for, the plaintiff raised serious objections. They pointed out that the counter claim in respect of a cause of action which has arisen subsequent to the filing of written statement cannot be entertained.

8. The court below accepted the plea raised by the respondents in the interlocutory application i.e., I.A.No. 2416/2009 and dismissed the counter claim. It is against the said order, this revision petition has been filed.

9. Sri. Roy Chacko, the learned counsel appearing for the revision petitioners very vehemently contended that the court below was not justified in dismissing the counter claim especially when the intention of the legislature is to prevent multiplicity of suits. It is no doubt true that going by the words of Order VIII Rule 6A of the Code of Civil Procedure, it may appear that the cause of action in respect of counter claim has to arise before the filing of written statement or within such time before the expiry of extended time for filing

the written statement. But that, according to the learned counsel, is not an invariable rule when the facts and circumstances of a case indicate that it is only just and proper that a counter claim be entertained. There is nothing which prevents the court from doing so. In fact, the court should encourage such proceedings of counter claim so as to enable the parties to have their rights adjudicated in the same proceedings. For the above proposition, the learned counsel relied on the decision reported in **Kerala Nadvathur Mujahideen v. Hussain Madvoor** (2007 (1) KLT 92), the decision of Karnataka High Court in Writ Petition No. 3900/2007 dated 04.04.2007, **Sushil Kumar Jain v. Manoj Kumar and another** ((2009) 14 SCC 38), **Jag Mohan Chawla and Another v. Dera Radha Swami Satsang and Others** ((1996) 4 SCC 699) and **Ajay Mohan and Others v. H.N. Rai and Others** ((2008) 2 SCC 507). Relying heavily on the decision of the Karnataka High Court, the learned counsel pointed out that a reading of the said

decision would show that there is no absolute prohibition in entertaining a counter claim if cause of action in respect of which the counter claim is preferred arose after the written statement is filed. The learned counsel also invited the attention of this Court that the said decision was rendered relying on the two decisions of the Apex Court. There is no reason as to why this Court should not adopt the same reasons.

10. The learned counsel appearing for the respondent pointed out that the consistent view of this Court was that the counter claim has to be in respect of a cause of action which arose before the filing of written statement or such extended period for filing the written statement. Thus, it is absolutely necessary that the cause of action of the counter claim should have arisen before the filing of the written statement or before the expiry of the extended period for filing the written statement. The counter claim in respect of a cause of action which arose subsequent thereto cannot be

agitated nor can it be incorporated in the written statement by way of amendment.

11. The learned counsel for the respondents relied on the decision reported in **Mahendra Kumar and Another v. State of Madhya Pradesh and Others** ((1987) 3 SCC 285), **Gwalior Rayons Silk Mfg. Co. Ltd. v. Ramadas** (1987 (2) KLT 1035), **John George v. Koran** (2009 (3) KLT 148) and **Vidyadharan v. Thankamma** (2012 (3) KLT 680).

12. The concept of the counter claim was introduced to C.P.C. by the Amendment Act 104 of 1976. Order VIII Rule 6A deals with the situation which reads as follows:

“6A. 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."

13. Order VIII Rule 6B is also very relevant which reads as follows:

"6B. Counter-claim to be stated.-- Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim."

14. A plain reading of Order VIII Rule 6A shows that the defendants can file a counter claim in respect of a cause of action which has arisen before the filing of the written statement or before the expiry of the period extended for filing of written statement. It is also stipulated that such a counter claim shall have the same effect as a cross-suit so as to enable the court to pronounce a final judgment on the original claim as well as on the counter claim. The plaintiff in the suit is given liberty to file a reply to the counter claim of the defendant within such period as may be fixed by the court.

15. Order VIII Rule 6B stipulates that when the defendant seeks to rely on any ground as supporting a right of counter claim, that fact shall be mentioned in the written statement that he does so counter claim. Even giving allowance for the non compliance of Order VIII Rule 6B, the rigour of Order VIII Rule 6A cannot be diluted.

16. Order VIII Rule 6A is only an enabling provision which enables the defendant to prefer a cross-suit in a particular situation and that situation is when the cause of action has arisen before the filing of the written statement or before the expiry of the time extended for filing the written statement. This is a condition for filing a counter claim going by a reading of Order VIII Rule 6.

17. Heavy reliance is placed by the learned counsel for the revision petitioners on **Kerala Nadvathur Mujahideen v. Hussain Madvoor** (2007 (1) KLT 92) especially reference to paragraphs 9 and 10 of the decision. But that decision does not lay any different principle than what is stated in Order VIII Rule 6A and that would be quite evident from a reading of paragraphs 13 & 14 of the judgment. True, in the said decision the cause of action for the counter claim is shown to have arisen on 18.11.2005 which is long after the filing of the written statement and the defendants sought to have the counter claim introduced on 23.11.2005. While

this Court in the above decision held that a counter claim can be filed even after the filing of the written statement or even after the expiry of the extended period for filing the written statement, in paragraph 14, the learned Judge analysed the facts of the case and came to the conclusion that on facts it could not be said that the cause of action for the counter claim arose on 18.11.2005. The cause of action in fact arose in 2002 or 2003 as the case may be and that is long before the filing of the written statement. Therefore, that decision is of no help to the petitioner to contend for the position that a counter claim can be preferred in respect of a cause of action even after the expiry of the period fixed for filing the written statement.

18. The Karnataka High court in Writ Petition No. 3900/2007 dated 04.04.2007, had occasion to consider a similar question. In the said decision, it was held as follows:

“9. Keeping this principle of law as enunciated by the Supreme Court in the decisions referred to supra it is necessary to

examine the fact situation in the instant case. The plaintiff has prayed for a negative relief in the plaint. In the plaint schedule the measurement of the properties are not given. On the other hand, the defendants claim that a portion of the schedule property is play area on which the plaintiff has not right, title and interest. Now under the proposed amendment the defendant wants to make a counter claim for a mandatory injunction to remove the built up portion on the play area. Instead of driving the defendants to file separate suit it will be most appropriate to allow the counter claim of defendants particularly when the prayer of plaintiff is for a negative declaration. By allowing the counter claim the public time will be saved, the hardship and inconvenience to the parties will be lessened and it will prevent multiplicity of proceedings and also inconsistent orders or verdicts. The trial Court without considering this aspect of the matter committed an error in rejecting the application filed by the defendant for amendment of written statement.

11. Learned counsel for respondents relying on a judgment of Supreme Court in the case of Mahendra Kumar and Anr. v. State of Madhya Pradesh and Ors. MANU/SC/0040/1987

: [1987] 3 SCR 155 contends that no counter claim be allowed in respect of a cause of action which has arisen after filing the written statement. The Supreme Court in Mahendra Kumar's case held, that counter claim by the defendant can be allowed after filing the written statement. At the time of filing the written statement if there is no cause of action to the defendant then the question of pleading counter claim at the first instance will not arise. Subsequent to filing of written statement if a cause of action has arisen then definitely the defendant can make counter claim in the written statement by way of amendment. Therefore there is no inconsistency in the finding of Supreme Court in Mahendra Kumar's case and in Rajesh Kumar Agarwal's case. In both the cases, the consistent view is that, if a cause of action has arisen subsequent to filing of written statement then the defendant is entitled to make counter claim in order to prevent the multiplicity of proceedings and conflicting decisions. The prayer in the suit and the prayer in the counter claim is between the same parties and in respect of same subject matter and before the Court having competent jurisdiction. Therefore the test is, whether a

counter claim can be allowed to resolve the real controversy between the parties. In the facts and circumstances of this case, I am of the opinion that the proposed amendment of written statement making a counter claim is necessary to resolve the real controversy between the parties and also to prevent the multiplicity of proceedings, conflicting of decisions and to save the public time and to lessen the hardship to the parties.”

19. It is no doubt true that the above decision supports the stand taken by the learned counsel for the revision petitioners to a considerable extend. But the two decisions of the Apex Court relied on in the said decision do seem to support the view taken by the Karnataka High Court. In the decision **Mahendra Kumar and Another v. State of Madhya Pradesh and Others** (AIR 1987 SC 1395) in which Considerable reliance was placed by the Karnataka High Court, it was held as follows:

“15. The next point that remains to be considered is whether R. 6A(1) of O. VIII, Civil P.C. bars the filing of a counter-claim after the

filing of a written statement. This point need not detain us long, for R. 6A(1) does not, on the face of it, bar the filing of a counter claim by the defendant after he had filed the written statement. What is laid down under R. 6A(1) is that a counter-claim can be filed, provided the cause of action had accrued to the defendant before the defendant had 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 High Court, in our opinion, has misread and misunderstood the provision of R. 6A(1) in holding that as the appellants had filed the counter claim after the filing of the written statement, the counter claim was not maintainable. The finding of the High Court does not get any support from R. 6A(1), Civil P.C. As the cause of action for the counter claim had arisen before the filing of the written statement, the counter claim was, therefore quite maintainable. Under Art. 113, Limitation Act, 1963, the period of limitation of three years from the date the right to sue accrues, has been provided for any suit for which no period of limitation is provided elsewhere in the Schedule. It is not disputed that a counter claim, which is treated as a suit under S. 3(2)

(b), Limitation Act. had been filed by the appellants within three years from the date of accrual to them of the right to sue. The teamed District Judge and the High Court were wrong in dismissing the counter claim.”

20. That decision does not lay down the principle that the counter claim can be filed in respect of the cause of action that arose after the written statement has been filed. In the decision reported in **Rajesh Kumar Aggarwal and Others v. K.K. Modi and Others** ((2006) 4 SCC 355) to which reference has been made by the Karnataka High Court it does not relate to filing of the counter claim at all and it deals with the question of amendment of the written statement. In the said decision, the principles to be applied in case if an amendment is sought for to the written statement was highlighted and that can be of no help to the petitioner in this case. It was also held that counter claim can be brought in by amending the written statement. In the decision reported in **Sushil Kumar Jain v. Manoj**

Kumar and another ((2009) 14 SCC 38), reliance is placed on paragraph 13 which reads as follows:

“At this stage, we may remind ourselves that law is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle.

“15.Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering, substituting a new cause of action.”

(See Baldev Singh and Ors. vs. Manohar Singh and Anr., AIR 2006 SC 2832). Similar view has also been expressed in Usha Balashaheb Swami v. Kiran Appaso Swami AIR 2007 SC 1663”

21. That decision did not deal with a situation that has arisen in this case. That was a case where the question involved is whether the amendment to a plaint and the written statement are governed by the same principles. The Apex Court, after considering various aspects, held that they stand on a different footings and it is not necessary that

principles applicable to the amendment of the plaint are applicable to the amendment of written statement. One fails to understand how it helps the petitioner.

22. In the decision reported in **Ajay Mohan and Others v. H.N. Rai and Others** ((2008) 2 SCC 507), reliance is placed on paragraph 9 and 19 of the decision which read as follows:

9. Appellants thereafter filed an application for amendment of plaint. They also preferred an appeal against the said order dated 13.10.2006 in the High Court of Judicature at Bombay. The said appeal, however, was withdrawn stating that they would move the trial court for amendment of the plaint. While allowing the said prayer, an observation was made that the trial court shall consider the question in regard to the amendment of plaint without in any way being influenced by the observations made by the learned trial Judge in the impugned order. Although, the High Court allowed the appellants to withdraw the appeal, it directed the parties to maintain status quo for a period of two weeks.

19. It is a trite law that the principles of res judicata apply in different stages of the same proceedings. [See Satyadhyan Ghosal and Ors. v. Smt. Deorajin Debi and Anr. [AIR 1960 SC 941], Arjun Singh v. Mohindra Kumar and Ors. [AIR 1964 SC 993] and C.V. Rajendran and Anr. v. N.M. Muhammed Kunhi [(2002) 7 SCC 447], Ishwar Dutt v. Land Acquisition Collector and Anr. [(2005) 7 SCC 190] and Bhanu Kumar Jain v. Archana Kumar and Anr. [(2005) 1 SCC 787].

The decision deals with the principle regarding the applicability of the principle of res-judicata at different stages of the suit, but did not deal with the question of amendment of the counter claim or written statement at all.

23. In **Jag Mohan Chawla And Another v. Dera Radha Swami Satsang And Others** ((1996) 4 SCC 699), reliance is placed on paragraph 5 where the Apex Court has considered the issue as to whether a counter claim could be filed on a different cause of action which has arisen after the institution of the suit. In the said decision, it was held as follows:

“A limitation put in entertaining the counter-claim is as provided in the proviso to sub-rule (1), namely, the counter claim shall not exceed the pecuniary limits of the jurisdiction of the Court. Sub-rule (2) amplifies that 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. The plaintiff shall be given liberty to file a written statement to answer the counter-claim of the defendant within such period as may be fixed by the Court.”

That decision does not go to the extent of holding that counter claim can be filed in respect of a cause of action which arose after expiry of the period extended for filing the written statement and is only for the proposition that cause of action for counter claim need not be related to cause of action of the plaint and could be independent of the plaint

24. This Court in the decision reported in **Vidyadharan v. Thankamma** (2012 (3) KLT 680) had occasion to consider a similar issue. In fact the issue that

was actually considered in the said decision was whether a counter claim could be filed after the filing of the written statement. That aspect is no longer res integra in the light of the decision of the Apex Court which had clearly held that a counter claim can be preferred even after the filing of the written statement provided the cause of action arises before the filing of the written statement or before the expiry of extended period for filing of written statement. In the said decision, it was held as follows:

“4. The requirement of sub-r. (1) of R.6A of O.VIII C.P.C. is that the counter claim must relate to a cause of action accrued to the defendant against the plaintiff before the defendant has delivered his defence or before the time limited for delivering his defence has expired. The cause of action for the counter claim could be one which arose either before or after the filing of the suit. A cause of action which has arisen after the filing of the written statement or after the time limited for delivering the defence has expired, cannot be the basis for filing a counter claim. On the other hand, if the cause of action for the

counter claim arose before the date of filing of the written statement or before the time limited for delivering the defence has expired, such a counter claim could be entertained even after filing the written statement. The date of filing of the written statement or the expiry of the time limited for filing of the written statement has relevance only to the cause of action for the counter claim and it has no relevance for filing the counter claim. Counter claim could be preferred even later by way of amendment of written statement. The only restriction is that such counter claim must relate to a cause of action which accrued before the filing of the written statement or before the time limited for delivering the defence has expired.”

25. In the decision reported in **Gwalior Rayons Silk Mfg. Co. Ltd. v. Ramadas** (1987 (2) KLT 1035), it was held as follows:

“O.VIII R.6A(1) does not, on the face of it, bar the filing of a counter-claim by the defendant after he had filed the written statement. What is laid down is only that the counter-claim can be filed provided the cause of action had accrued to the defendant before he delivered

his defence or before time fixed for delivery of defence has expired. That means on such a cause of action counter-claim could be filed before the expiry of the period of limitation if the suit is then pending and is at a stage that it could conveniently be entertained. When written statement already filed is allowed to be amended by adding a counter-claim the amendment also takes effect as on the date of the original written statement. That means if the claim was not barred on the date of the original written statement but barred on the date when the amendment was sought for or allowed, the defendant is thereby getting a successful opportunity of overcoming the plea of limitation and the plaintiff is put to the prejudicial position of being negated of the right of that plea.”

26. In the decision reported in **John George v. Koran** (2009 (3) KLT 148) an identical question was considered. It was held as follows:

“Relying on *Sugesan & Co. Pvt. Ltd. v. Hindustan Machine Tools Ltd.* (AIR 2004 A.P. 428), learned counsel for the petitioner submitted that a counter claim has to be treated as a cross suit and it can be filed even

after filing of the written statement in the suit. No doubt, a counter claim can be filed after filing of the written statement, but, subject to the interdiction placed under O. VIII R.6A C.P.C. Sub-s.(1) of O.VIII R.6A C.P.C. reads thus:

“A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counterclaim 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.”

Entertainment of a counter claim even after filing of the written statement has to be examined with reference to the date of cause of action entitling the defendant to present such a claim in the suit instituted by another. The mandate under O. VIII R.6A C.P.C. makes it abundantly clear that a counter claim arising from a cause of action which had arisen before or after filing of the suit which continue to be in operation up to the date of filing of the written statement or extended date of filing of the written statement alone can be entertained after filing of the written statement by the defendant. In *Mahendra Kumar v. State of M.P.* (1987 (2) KLT SN 9

(C.No.10) SC = (**1987**) 3 SCC 265) it has been held thus:

“.....6A(1) of O.VIII C.P.C. does not, on the face of it, bar the filing of a counter-claim by the defendant after he had filed the written statement. What is laid down under R.6-A(1) is that a counter-claim can be filed, provided the cause of action had accrued to the defendant before the defendant had delivered his defence or before the time limit for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.””

27. In the decision reported in **Mahendra Kumar and Another v. State of Madhya Pradesh and Others** ((1987) 3 SCC 285), the Apex Court had occasion to hold as follows:

“13. Another aspect in this regard may be considered. It may be argued that as the Collector had not allowed the appellants and respondents 6 to 8 to file a counter-claim or a suit, the suit was not maintainable. In our opinion, the question of filing a counter-claim arises after a suit is filed by the claimant under S. 8. It may be that there is no substantial difference between a counter claim and a suit, but nonetheless a defendant cannot be prevented from filing a counter claim under the Code of Civil Procedure.

15. The next point that remains to be considered is whether R. 6A(1) of O. VIII, Civil P.C. bars the filing of a counter-claim after the filing of a written statement. This point need not detain us long, for R. 6A(1) does not, on the face of it, bar the filing of a counter claim by the defendant after he had filed the written statement. What is laid down under R. 6A(1) is that a counter-claim can be filed, provided the cause of action had accrued to the defendant before the defendant had 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 High Court, in our opinion, has misread and misunderstood the provision of R. 6A(1) in holding that as the appellants had filed the counter claim after the filing of the written statement, the counter claim was not maintainable. The finding of the High Court does not get any support from R. 6A(1), Civil P.C. As the cause of action for the counter claim had arisen before the filing of the written statement, the counter claim was, therefore quite maintainable. Under Art. 113, Limitation Act, 1963, the period of limitation of three years from the date the right to sue accrues, has been provided for any suit for which no

period of limitation is provided elsewhere in the Schedule. It is not disputed that a counter claim, which is treated as a suit under S. 3(2) (b), Limitation Act. had been filed by the appellants within three years from the date of accrual to them of the right to sue. The teamed District Judge and the High Court were wrong in dismissing the counter claim.”

28. A careful reading of the decisions of the Apex Court and the decisions of this Court leave one in no doubt that the principle embodied in Order VIII Rule 6A is that the defendant can prefer a counter claim either by way of amendment to the written statement or by way of independent claim provided the cause of action has arisen before the filing of written statement or expiry of the extended period for filing the written statement.

29. The learned counsel for the revision petitioners may be justified in his submission that the effort of the court should be to avoid multiplicity of the suits. But when the statute is very clear that there is no scope for diluting the rigour of the same especially when it has come up for an

interpretation by the Apex Court wherein it was held as it should be considered strictly.

30. A reading of Order VIII Rule 6A would show that a counter claim is in par with a cross-suit and also that the court is called upon to pronounce both on the claim and counter claim. In this context, it has been viewed that Order VIII Rule 6A is an enabling provision and strict adherence will have to be insisted.

For the above reasons, this Court finds no error in the order of the court below refusing to entertain the counter claim. This revision is without merits and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge