

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.384 of 2015

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ORDER:
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Heard Sri Anand Kumar Kapoor, learned counsel for petitioner and Sri M.S.Srinivasa Iyengar, learned counsel for respondent.

2. This Civil Revision Petition is filed challenging the order

dt.12-12-2014 in I.A.No.5137 of 2014 in O.S.No.92 of 1998 of the

I Additional Chief Judge, City Civil Court, Secunderabad.

3. The petitioner herein is defendant in the above suit.

4. The respondent/plaintiff filed the above suit against petitioner for recovery of Rs.1,97,73,981/- with interest @ 18% p.a. on Rs.1,47,21,000/- from the date of filing of suit till the date of full payment.

5. The petitioner herein filed a written statement denying its liability to pay the amount claimed by respondent and in turn stating in paragraph-17 of written statement that it is entitled to a sum of Rs.62,91,225.13 Ps. from respondent. This written statement was filed in

September, 1999.

6. Issues were framed and trial commenced and concluded. The matter is coming up for arguments.

7. At that stage, the petitioner filed I.A.No.5137 of 2014 under Order VI Rule 17 CPC contending that the written statement was in substance a counter-claim; a counter-claim should contain all particulars akin to a plaint, in view of Order VIII Rule 6A(4) CPC and is governed by the Rules applicable to plaints; but the matters relating to the cause of action, jurisdiction, Court fee, prayer etc. were not mentioned by oversight in the written statement; the Court below had earlier permitted the petitioner to pay Court fee on the counter claim vide order dt.01-12-2006 in I.A.No.2584 of 2006 in the suit; the same was confirmed by this Court vide order dt.18-06-2010 in C.R.P.No.539 of 2007; no further evidence is required to be adduced by any party if these details are incorporated and the counter claim also can be considered by the Court below; no prejudice would also be caused to respondent; and to avoid further complications in future and to ensure that technicalities would not come in the way to render justice to the parties, the petitioner be permitted to amend the written statement in the manner sought for in the said application.

8. Counter affidavit was filed by respondent opposing this application contending that this application had been filed after arguments for respondent had been concluded and at this stage it is not proper to grant amendment of written statement particularly since the trial had commenced on 18-09-2001 and had concluded long prior to the filing of this application. Reliance is also placed on the proviso to Order VI Rule 17 CPC. It is contended that once trial commenced, unless the petitioner has satisfied the Court that in spite of due diligence, the matter could not have been raised earlier, the Court cannot allow it. It is also contended that the counter-claim, if allowed as on date, would be barred by limitation under the provisions of the Limitation Act, 1963.

9. By order dt.12-12-2014, the Court below dismissed the said I.A. The Court below held that the proviso to Order VI Rule 17 CPC, which came into force on 01-07-2002, would not apply to a suit filed prior to that date. It however held that if amendments are allowed at this stage, it would result in the petitioner being permitted to rectify certain lacuna in the original written statement and it would cause prejudice to respondent. It further held that counter claim in the existing written statement is not in proper form; it cannot be considered as a counter-claim at all; taking into fact that 13 years after suit has been filed,

the application for amendment had been filed, if it is allowed now, the proposed counter-claim would be barred by limitation.

10. Challenging the same, this Revision is filed.

11. The learned counsel for petitioner contended that although the suit was filed in 1998 and the written statement was filed in September, 1999, the petitioner had made an averment in the written statement making the counter-claim of Rs.62,91,235.13 Ps. in paragraph No.17 of written statement; that petitioner had also been permitted to pay the Court fee thereon by the trial Court vide order dt.01-12-2006 in I.A.No.2584 of 2006; the said order was also confirmed by this Court by order dt.18-06-2010 in C.R.P.No.539 of 2007; this Court had approved the reasoning of the trial Court in I.A.No.2584 of 2006 that there already existed a counter-claim for the above amount in the written statement on which the Court fee can be permitted to be paid by the petitioner; this order was also brought to the notice of the trial Court when it passed the impugned order, but it merely referred to the said order and did not take into account the finding therein that there is already a counter-claim incorporated in the written statement filed by petitioner; therefore the reasoning of the Court below that the counter-claim in

written statement is not in proper form and therefore cannot be considered as a counter-claim, is unsustainable; in such an event the issue of limitation would also not arise for consideration; and therefore the Court below is not correct in stating that by allowing the amendment as sought by petitioner, it would cause prejudice to respondent and it would amount to permitting the petitioner to rectify the lacuna in the written statement already on record in the Court below.

12. The learned counsel for respondent on the other hand contended that the reasoning of the Court below is correct and that under Order VIII Rule 6A CPC, no counter-claim can be permitted after the written statement has been filed containing defence of the petitioner; since the defence of petitioner has already been filed in September, 1999 in the form of written statement without any prayer for relief of recovery of sum of Rs.62,91,225.13 Ps., allowing the petitioner now to amend the counter-claim by adding such prayer would amount to permitting the counter-claim now and this is clearly prohibited by Order VI Rule 8A CPC. He also sought to place reliance on the decision of the Supreme Court in **Bollepanda P.Poonacha and another Vs. V.K.M.Madapa**^[1].

13. I have noted the submissions of both sides.

14. The admitted facts are that the suit was filed by respondent for recovery of money against petitioner in August, 1998. Written statement was filed by petitioner in September, 1999. In para-17 of the written statement, it is specifically alleged by petitioner that respondent is due to pay to petitioner a sum of Rs.62,91,225.13 Ps., that the respondent is liable to pay the said amount and the petitioner is not liable to pay any amount to respondent. The existence of these pleadings is not disputed by respondent.

15. It is also not disputed that petitioner had filed I.A.No.2584 of 2006 in the suit seeking payment of Court fee on the counter-claim which according to him already existed in the written statement filed by him in September, 1999 in the suit. This application was contested by respondent. The trial Court, by order dt.01-12-2006 allowed the said application observing :

*“No doubt mistakenly at the time of filing of written statement, the defendant has not paid the Court fee for the counter claim. Now, the counter claim is for Rs.62,92,225.13 Ps. So when the counter claim is made, the defendant is supposed to pay the Court fee. But he contended that his counsel has not informed for payment of Court fee and now he is prepared to pay the Court fee. In view of the facts and circumstances of the case,
I am inclined to permit the defendant to pay the Court fee for counter claim. Accordingly, the petition is*

allowed.”

16. This was questioned in C.R.P.No.539 of 2007 by respondent. The said Revision was dismissed on 18-06-2010. This Court held that it is satisfied that the exercise of discretion by trial Court in permitting the petitioner to pay Court fee on counter-claim was proper and that there was no legal infirmity in the said order.

17. From a reading of the reasoning given in I.A.No.2854 of 2006 by the trial Court, which has been approved by this Court in C.R.P.No.539 of 2007, it is clear that the trial Court had given a finding that written statement already filed in September, 1999 by petitioner contains a counter-claim which is for Rs.62,92,225.13 Ps. This finding of the trial Court, which has been confirmed by this Court in Revision, has not been assailed by the respondent before the Supreme Court of India. Therefore, this finding has attained finality. Once this finding exists, it is not permissible for respondent to again raise a plea that the written statement, as originally filed in September, 1999 by petitioner, does not contain a counter-claim. The respondent is precluded by the principle of *res judicata* from assailing the finding given in the order dt.01-12-2006 in I.A.No.2584 of 2006, which has been confirmed by this Court in its order dt.18-06-2010 in C.R.P.No.539 of 2007.

18. Therefore, when the petitioner has sought amendment of written statement-cum-counter-claim filed by him in September, 1999 to incorporate certain paragraphs relating to cause of action, jurisdiction etc. (in view of the fact that the counter-claim would be governed by the Rules applicable to plaints in which certain particulars need to be given), it is merely a matter of procedure. Since the written statement-cum-counter-claim filed earlier was defective in form in as much as particulars regarding cause of action, Court fee, jurisdiction etc. which are supposed to be contained in a plaint are not contained in it and such form was sought to be corrected, the same cannot be found fault with. The contention based on Order VIII Rule 6-A CPC by the learned counsel for respondent (that allowing the amendment would amount to permitting the petitioner to raise a counter-claim now after he had delivered his defence by way of amendment), cannot be countenanced in view of order dt.18-06-2010 in C.R.P.No.539 of 2007 which has accepted the finding of the trial Court that in the written statement already filed in September, 1999 by petitioner, there exists a counter-claim. Therefore the decision in **Bollepanda P.Poonacha** (1 supra) interpreting Order VIII Rule 6-A CPC has no application.

19. It is unfortunate that the Court below, referred to the order

dt.18-06-2010 in C.R.P. No.539 of 2007 (wherein this Court had approved the reasoning in the order dt.01-12-2006 in I.A.No.2584 of 2006), but has ignored it in the operative part of its order. Had it considered the same, it would have realized that the said order binds the respondent and precludes the respondent from contending not only that Order VIII Rule 6-A CPC prohibits the amendments but also that the proposed amendment would be barred by limitation.

20. I also do not agree with the finding of the trial Court in the impugned order that prejudice would be caused to respondent if amendment is allowed because the counter-claim is already present in the written statement filed in September, 1999 by petitioner and respondent cannot now plead to be ignorant of it. In fact, in the plaint also there is a reference to the claim of petitioner for the above amount at para-12.

21. For all these reasons, I am of the opinion that the order passed by the Court below is unsustainable. It is accordingly set aside and I.A.No.5137 of 2014 is allowed. The Court below is directed to permit the respondent to file a written statement in answer to the counter-claim of

petitioner within such time as may be fixed by it in view of Order VIII Rule 6-A(3) CPC, frame an additional issue on the counter-claim raised by petitioner, reopen the evidence on both sides and permit both parties to lead evidence thereon, if they so choose. Since the suit is of the year 1999, this exercise shall be completed within a period of six months from the receipt of a copy of this order.

22. This Civil Revision Petition is allowed accordingly.
No costs.

23. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 15-07-2015

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[\[1\]](#) AIR 2008 SC 2003