

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

CIVIL REVISION PETITION No.4208 of 2014

ORDER:

The short point which arises for consideration in this Revision is “whether the respondent/defendant is entitled to file a counter-claim after she filed the written statement in the suit denying the suit claim?”

2. The suit was filed by petitioners against respondent for declaration of their title to the plaint schedule property and for the relief of perpetual injunction.

3. In December, 2012, written statement was filed by respondent opposing the suit claim and contending that plaint schedule property is the self-acquisition of respondent and contending that the petitioners, who are her son and husband, have no right in it.

4. In June, 2013, the respondent filed I.A.No.71 of 2014 under Order VI Rule 17 CPC contending that when she filed the written statement in December, 2012 she was residing in the plaint schedule property, but two days prior to filing of application for amendment in June, 2013, the petitioners had highhandedly thrown the respondent out of the plaint schedule property and occupied it

illegally. She further contended that she had no opportunity to raise the plea of recovery of possession in the written statement originally filed by her because on that day she was in possession of the property, but now after her dispossession pending suit, she is entitled to make the counter-claim for recovery of possession by raising necessary pleas in this regard. She also sought to incorporate necessary amendments to the written statement with regard to this counter-claim.

5. Counter affidavit was filed to this application by petitioners contending that the application is not maintainable because it is filed belatedly; contention of respondent that she had been dispossessed pending suit is false; that it introduces a new case by way of alleged counter-claim and it is not permitted by law.

6. By order dt.18-09-2014, the Court below allowed the said I.A. It rejected the contention of petitioners that the cause of action for the counter claim did not arise subsequent to suit. It held that since respondent's plea is that she has been forcibly dispossessed from the plaint schedule property by petitioners after filing the suit and the said relief is not barred by limitation, under Order VIII Rule 8 CPC, such a plea can be permitted.

7. Challenging the same, this Revision Petition is filed.

8. The learned counsel for petitioners Sri D.Ramakrishna contended that the impugned order cannot be sustained in view of the judgment of the Supreme Court in **Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others**^[1]. He contended that under Order VIII Rule 6A CPC a defendant is permitted to file a counter-claim against the claim of plaintiff 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 expired. He contended that since the alleged event of dispossession is said to have taken place after the defendant had delivered her defence by way of written statement and the cause of action admittedly accrued to defendant after written statement was filed, she is not entitled to invoke Order VI Rule 6A CPC.

9. The learned counsel for respondent, on the other hand, refuted the said contention and relied upon Order VIII Rule 8 CPC. It states that any ground of defence which has arisen after the institution of the suit or the presentation of a written statement (claiming a set-off or counter-claim) may be raised by the defendant or plaintiff,

as the case may be, in his written statement. He therefore contended that since the cause of action to respondent had arisen after the written statement was filed, in June, 2013, the defendant is entitled to seek amendment of written statement by raising this counter-claim.

10. I have noted the contentions on both sides.

11. Order VIII Rule 6A CPC states:

“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.”

12. Order VIII Rule 8 CPC states:

“8. New ground of defence. Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off [or

counter-claim] may be raised by the defendant or plaintiff, as the case may be, in his written statement.”

13. The case which arose in the Supreme Court in **Mahendra Kumar** (1 supra), did not deal with the situation of counter-claim having been raised on account of an event which transpired after the written statement was filed. Therefore, the said decision has no application to the facts of the case.

14. Order VIII Rule 8 CPC undoubtedly entitles a defendant, who had already filed written statement, to raise any ground of defence which had arisen after the institution of the suit or presentation of a written statement claiming a set-off or counter-claim in the written statement. This aspect has been considered by this Court in **Srikanth Spinners rep. by its Proprietor, K.Rajesham Vs. State Bank of India rep. by its Branch Manager**^[2]. In that case, suit was filed by a bank against defendant in respect of certain debts allegedly due by defendant to the Bank. According to the pleadings of plaintiff, certain machinery of the defendant had been hypothecated to the Bank. After written statement was filed, the defendant alleged that the security of the machinery was lost in fire which occurred on 06-03-1992 and the defendant was deprived of the machinery

hypothecated with the Bank. Thus the defendant attributed laches on the part of the plaintiff-Bank in not preserving or saving the security for not only the benefit of the Bank but also to the benefit of the defendant to discharge the debt and also by not taking insurance to indemnify such a loss. This was opposed. This Court held that since the event in question had occurred after filing of written statement, defendant could not have brought that fact to the notice of the Court before filing the written statement. It held that he was entitled to bring it to the notice of the Court and the Court was bound to consider and decide the same in accordance with law since it is a subsequent event. It held that Order VIII Rule 8 CPC entitles a party to seek counter-claim or set-off in these circumstances and that it does not amount to changing the character of the suit. It further held that there is no conflict between Order VIII Rule 6A or Order VIII Rule 8 CPC, and that parties cannot be driven to unnecessary litigations and although causes of action for the suit claim and the counter-claim were different, but since they had accrued due to different events taking place at different times, the trial of such questions would involve common questions of law and fact and to give finality to the litigation between the parties, the counter-claim can be permitted.

15. This decision, in my opinion, applies in all fours of the present case. In view of this decision, I am of the opinion that the respondent is entitled to invoke Order VIII Rule 8 CPC and raise a counter-claim since the cause of action for her to raise the counter-claim allegedly accrued after filing her written statement and only in June, 2013 just prior to filing of I.A.No.71 of 2014

16. I therefore do not find any merit in the Civil Revision Petition and it is accordingly dismissed. No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 02-07-2015

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[\[1\]](#) AIR 1987 SC 1395

[\[2\]](#) 1995(2) ALD 739