

33# \$

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 510/2015**

% Decided on: 25th May, 2015

GURMEET SINGH & ANR Petitioners

Through: Mr. Vivek Sharma, Advocate.

versus

MANJEET SINGH & ANR Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

CM No. 10032/2015 (Exemption)

Allowed, subject to all just exceptions.

CM(M) 510/2015 and CM No. 9904/2015 (Stay)

1. Aggrieved by the order dated 20th March, 2015 whereby the application of the Respondents/Defendants under Order VI Rule 17 CPC was allowed, the Petitioner prefers the present petition.
2. The Petitioners/Plaintiffs filed a suit seeking relief of permanent injunction against the Respondent claiming that they were sons of Shri Manjeet Singh and Smt. Kawaldeep Singh and are in possession of certain portions of the suit premises and the Respondents/Defendants were threatening to dispossess them without due process of law.
3. The Petitioners/Plaintiffs filed an application under Order VI Rule 17 CPC which was allowed vide order dated 5th May, 2014. The Defendants/Respondents were given opportunity to file the amended written

statement but they did not avail of the same. However, the Defendant No.2, that is, Smt. Kawaldeep Singh filed the present application under Order VI Rule 17 CPC and also placed on record the counter claim.

4. Learned counsel for the Petitioners states that the counter claim was not placed at the earlier stage and thus the same could not be filed later on. It is stated that since time was prescribed for filing of the written statement and the counter claim cannot be taken on record after the time prescribed for filing the written statement.

5. Admittedly, the trial has not started and issues are yet to be settled. This is also not the case of the Petitioners that the relief prayed in the counter claim is time barred. The only plea taken is that the counter claim ought to have been filed within 30 days, that is, the time prescribed for filing of the written statement. It is well settled that a counter claim is the cross-suit and can be dismissed only if the relief prayed is beyond the period of limitation. Order VII Rule 6A CPC provides that the 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. The time for filing the amended written statement was granted to the Respondents till 9th July, 2014 on which date, that is, 9th July, 2014, the counter claim was filed. Thus the provision of Order VIII Rule 6A CPC has not been breached.

6. In Bollepanda P. Poonacha and another vs. K.M. Madapa, AIR 2008 SC 2003 the Supreme Court held that though the belated counter claim must

be discouraged by the Court however, the Defendant has been allowed to amend his written statement so as to enable him to elaborate his defence or to take additional pleas in support of his case the court has wide discretion. It must however, sub-serve the ultimate cause of justice and endeavour should be made to avoid further litigation.

7. Consequently, the present petition and the application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 25, 2015
‘vn’