

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10521 of 2014

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Ram Kumar Prasad

.... Petitioner/s

Versus

Nagendra Prasad & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Birendra Nath Mishra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 07-01-2016

Heard the learned counsel for the petitioner.

This application under Article 227 of the Constitution of India has been filed by the plaintiff against the order dated 15.04.2014 passed by Sub Judge 2nd Court, Chapra in Title Suit No.43 of 2000 whereby the Court below allowed the defendant to file fresh counter-claim after permitting the defendant to withdraw the counter-claim already filed on the ground that the counter-claim already filed is defective.

The only grievance of the plaintiff is that in a suit for specific performance, counter-claim for eviction under the Bihar Building (Lease, Rent & Eviction) Control Act, 1982 could not have been allowed. The learned counsel relied upon Division Bench decision of this Court in A.I.R. 1983 Patna 132 and submitted that in case of only money suit, the counter-claim can be filed by the defendant. The learned counsel further submitted

that the counter-claim was also barred.

It appears that the plaintiff-petitioner filed aforesaid title suit for specific performance of contract against the defendant. The defendant had filed this counter-claim claiming eviction of the plaintiff from the suit premises on the ground of personal necessity and default. When the counter-claim was found defective, the defendant filed application for seeking permission to withdraw the defective counter-claim and then seeking permission to file fresh counter-claim. By the impugned order, the Court below has allowed the prayer.

The Hon'ble Supreme Court in the case of **Jag Mohan Chawla and another v. Dera Radha Swami, Satsang and others, AIR 1996 Supreme Court 2222** has held that "A defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant of file a separate suit. In sub-rule (1) of Rule 6A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of

action on the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff."

In view of the above settled proposition of law laid down by the Hon'ble Supreme Court, I do not find any reason to interfere with the order passed by the Court below in exercise of supervisory jurisdiction.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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