

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4652 of 2014

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1. Yusuf Haider Khan Son Of Late Akhter Hussain Khan, Resident Of Mohalla-
Dulighat, P.S.- Khajakalan, Patna City, District- Patna

.... Petitioner/s

Versus

1. Eqbal Haider Khan Son Of Late Akhter Hussain Khan, Resident Of Mohalla-
Dulighat, P.S.- Khajakalan, Patna City, District- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. UDAY KUMAR

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-04-2016

Heard the petitioner in person.

2. Learned counsel for the respondent has submitted
that the Court may pass any order in accordance with law as he has
not to make any submission.

3. This application has been filed under Article 227 of
the Constitution of India praying for quashing the order dated
31.01.2013 and 20.04.2011 relating to the counter claim filed by the
respondent in Title Suit No. 11 of 1987. The fact is not in dispute
that the petitioner as plaintiff filed the suit for partition. The sole
respondent in the present application is sole defendant in the suit. In
the suit, the written statement was filed on behalf of the defendant
on 08.07.1992 (Annexure-3). It further transpires that the prayer for



amendment in the written statement was allowed by the court on 02.08.2010 whereby the defendant had introduced the averment/claim that he granted licence on 01.05.1985 to the plaintiff to occupy one room in the holding in the suit with a condition that the licence would be revoked when the petitioner would bring concubine therein to live with. It had also been inserted by the said amendment that the licence automatically stood revoked on 01.01.1992 when the plaintiff brought the concubine therein to live with him. Thereafter the defendant filed a counter claim on 17.08.2010 (Annexure-4) on the basis of the aforesaid averment and prayed for a decree of eviction against the plaintiff with regard to the room described fully in Schedule-A of the counter claim.

4. It transpires from the ordersheet annexed as Annexure-1 to this application that by order dated 20.04.2011, the learned court below admitted the counter claim and directed the suit to proceed accordingly. It further transpires that on the said date both the plaintiff and defendant were represented by their learned counsel before the court. It however transpires that the plaintiff being aggrieved by the admission of the counter claim filed a petition for review of the order dated 20.04.2011 on the ground that the said order was collusive. By order dated 31.01.2013, the learned court has dismissed the review petition. The present application has

been filed for quashing the order dated 20.04.2011 and also the order dated 31.01.2013.

5. The petitioner who has appeared in person has submitted that the defendant's case as made out in the counter claim has got no merit and the said counter claim should not have been admitted by the court below. It has also been submitted that the counter claim was barred by limitation as it was filed nearly 24 years after the presentation of the written statement. No further submission has been made on behalf of the respondents.

6. The relevant provision under Order 8 Rule 6A C.P.C which can be said to limit the right of a defendant in filing a counter claim is as follows:-

"6-A. Counter Claim by defendant.-
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."

.....

7. From the conspectus of the above provision it is



evident that the limitation upon the right of a defendant to file a counter claim is firstly that it must relate to a right or claim in respect of cause of action which has arisen against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limit for the same has expired and secondly the counter claim must not exceed the pecuniary limit of the jurisdiction of the court. There is no other limitation prescribed for filing a counter claim. In the present case, it is manifest from the records that the written statement was filed by the defendant on 08.07.1992 in the suit thereafter the amendment in the written statement was allowed by the court on 02.08.2010. The order allowing the amendment was not challenged by the plaintiff. It is well settled that an amendment in the pleading, if allowed, would relate back to the filing of the pleading unless otherwise directed. In the present case the counter claim relates to the cause of action, as stated therein, arising in the year 1985 and 1986 which are the dates definitely before the filing of the suit. Further the case of revocation of the alleged licence as stated by the defendant is also before the filing of the written statement. In this view of the matter the counter claim as filed by the defendant could not have been said to be barred by any law.

8. It also transpires from the order dated 20.04.2011



that the counter claim was accepted by the learned court below in presence of both the parties. The allegation of the petitioner that the order dated 20.04.2011 is a collusive one has been considered by the court and it has been found to have no substance. Even otherwise also such allegation against the court or its staff require strict proof for its sustenance. Otherwise it is only vexatious. No material could be produced before this Court also by the petitioner to corroborate this allegation.

9. This court in this backdrop therefore, does not find substance in the submission on behalf of the plaintiff-petitioner that the order dated 20.04.2011 and 31.01.2013 passed by the learned court below suffers from any error of jurisdiction or irregularity. This Court, therefore, is not inclined to invoke its jurisdiction under Article 227 of the Constitution of India for interdicting the said order. However it is also apparent that the suit for partition has been filed in the year 1987 and the same is still pending for disposal. It is in the fitness of things that the learned court below be directed to dispose of the suit expeditiously and without any further delay. The petitioner has submitted that the issues in the suit have already been framed but the matter is being delayed for the reason directly attributable to the defendant.

10. Considering these facts, this court directs the

learned court below to expeditiously take up the hearing of the suit and dispose it of preferably within a period of one year from the date of receipt/production of a copy of this order.

11. This writ application is accordingly disposed of with direction.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.05.2016
Transmission Date	NA