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Appeal
For the

.... Petitioner/s

1. Kamla Devi W/O Anand Mohan Prasad R/O Mouza, Jagdishpur, P.O. & P.S. Jagdishpur, Distt.- Bhojpur

.... Respondent/s

For the Petitioner/s : Mr. Anish Chandra Sinha, -Advocate
Mr. Sangha Mitra Ghosh, -Advocate
Mr. Krishna Murari Raut, -Advocate

For the Respondent/s : Mr. Amit Prakash, -Advocate
Mrs. Priya Gupta, Advocate
Mrs. Madhuri Kumari, Advocate

ORAL ORDER

4 24-02-2016

2. Petitioner/plaintiff is aggrieved by order dated

3. It has been submitted on behalf of the petitioner



respondent made a counter claim whereupon petitioner/plaintiff made an objection to reject the aforesaid counter claim which, the learned lower court observed that the matter in hand had already been disposed of at an earlier occasion vide order dated 22.07.2008 as well as 09.08.2008 which is itself apparent from the averments of the petition dated 17.06.2008 filed on behalf of petitioner. It has further been submitted that respondent/defendant in the background of amendment of the plaint was entitled only to file an additional WS. Therefore, advancing counter claim at that very stage happens to be bad and contrary to the spirit of Order VIII Rule 6A of the CPC whereunder counter-claim was to be filed before filing of WS or before the time so extended by the learned Court.

4. So submitted that instead of disposing of the petition, the learned lower court should have considered the objection raised by the petitioner and further, would have rejected the counter claim made on behalf of respondent/defendant.

5. Learned counsel representing respondent/defendant has opposed the prayer and submitted that petitioner/plaintiff happens to be in the habit of filing such kind of petitions repeatedly only to linger the proceeding.

6. Order VIII Rule 6A is a special proviso to be availed



by the defendant whenever, apart from proper answering the averments of the plaint, could file counter-claim for proper adjudication, which could be decided in the same suit, instead of filing independent suit for that purpose. Certainly, there happens to be enumeration of a condition under Order VIII Rule 6A that the aforesaid exercise must be completed before the defendant delivers his defence or the time so extended by the Court. In the present case, the respondent/defendant had filed WS to counter-meet with the averments of the plaint. After filing of WS, the plaint was amended. Once the plaint was amended, the amended portion had given a new cause whereupon an additional WS is to be filed.

7. Because of the fact that by having an opportunity to file additional WS in the background of amendment of plaint, that does not mean that at that very moment, the defendant is precluded from filing or raising counter claim and that happens to be the reason behind that such kind of opportunity has been provided under Order VIII Rule 9 of the CPC whereunder subsequent filing of pleading relating to set off or counter claim has been made permissible.

8. That being so, I do not see any cogent reason to interfere with the order impugned. Hence, petition is rejected.

9. However, it is made clear that if the circumstances so necessitates, the petitioner/plaintiff will have an option available in terms of order VIII Rule 6 (C) of the CPC to pray before the learned lower court duly substantiated with the grounds for separate adjudication.

10. The stay, granted in the instant petition vide order dated 11.08.2011, stands vacated.

(Aditya Kumar Trivedi, J)

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