

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.39 of 2015

1. Gulshera Begum W/o Shri Kadar Khan Aged About 70 Years R/o Village and Post Masturi, Civil And Revenue Distt.- Bilaspur, Chhattisgarh
2. Begum Bee W/o Shri Deen Mohammed Aged About 65 Years R/o Village - Vidyadih, Post Okhar, Tahsil Masturi, Civil and Revenue Distt.- Bilaspur, Chhattisgrh

---- Petitioners

Versus

1. Paluram S/o Manbodh Agharia, Aged About 56 Years R/o Village Kutela, Near Village Vidyadih, P.C. No. 44, R.I. Circle and Tahsil Masturi, Civil and Revenue District Bilaspur, Chhattisgarh
2. State Of Chhattisgarh Acting Through Collector Bilaspur, Chhattisgarh

---- Respondents

For Petitioners : Shri Devesh G.Kela, Advocate
For Respondent No.1 : Shri Chandrabhushan
Kesharwani, Advocate

For Respondent No.2 : Shri Sameer Behar, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. ORDER

08/07/2016

- 1) Plaintiff-Must.Gulshan Bee filed Civil Suit against defendant-Paluram for recovery of possession of the suit land on 17.9.1990 (Annexure P/4), in which defendant No.1-Paluram filed his written statement on 9.3.1994 (Annexure P/5) to this civil revision and thereafter

defendant No.1 filed his counter-claim vide Annexure A/8 on 19.6.2008. Thereafter, the plaintiff's withdrew her civil suit on 2.5.2009. In the meanwhile, plaintiff-Mst. Gulshan Bee died and her legal representatives (applicants herein) filed an application under Order 7 Rule 11 read with Section 151 of the CPC stating inter-alia that counter-claim, which has been filed by defendant No.1 on 19.6.2008, is barred by law and not maintainable, therefore, it is liable to be rejected, which was opposed by defendant No.1 by filing his reply.

- 2) The trial Court by its impugned order rejected the same holding that it cannot be said to be barred by limitation.
- 3) Feeling aggrieved against the order rejecting application under Order 7 Rule 11 of the CPC, the applicants herein have filed civil revision under Section 115 of the CPC.
- 4) Mr.Devesh G. Kela, learned counsel appearing for the petitioners, would submit that the trial Court is absolutely unjustified in rejecting the application under Order 7 Rule 11 of the CPC. Counter-claim has been filed after filing of the written statement on 19.3.2014 (Annexure P/8) and cause of action is said to have been arisen in March-April, 2008 as per paragraph 7 of the counter-claim, therefore, said counter-claim is hit by Order 8 Rule 6A of the CPC. He would rely upon the judgement of the Supreme Court in the matter of **Vijay Prakash Jarath vs.**

Tej Prakash Jarath¹. Therefore, the revision deserves to be allowed and order impugned deserves to be set aside.

- 5) Mr. Chandrabhushan Kesharwani, learned counsel appearing for respondent No.1, would submit that counter-claim as framed and filed is maintainable and the trial Court is absolutely justified in rejecting the application under Order 7 Rule 11 of the CPC. He would rely upon the judgement of the Supreme Court in the matter of **Sh. Jag Mohan Chawla and Anr. vs. Dera Radha Swami Satsang and ors.**²

- 6) I have heard learned counsel for the parties, considered the rival submissions made therein and gone through the documents available on record with utmost circumspection.
- 7) It is not in dispute that original plaintiff Must. Gulshan Bee filed a civil suit against defendant-Paluram for recovery of possession of the land in dispute on 17.9.1990, in which defendant No.1 Paluram has filed his written statement on 9.3.1994 and counter-claim was filed on 19.6.2008. Now, the question would be whether such a counter-claim is maintainable in law as it is the case of the present petitioners/plaintiffs that cause of action for filing counter-claim has arisen after filing of the written statement on 9.3.1994, therefore, counter-claim as framed and filed is not maintainable in law.

¹ AIR 2016 SC 1304

² [1996] Supp 2 S.C.R. 509

- 8) In order to decide the plea raised at the Bar, it would be profitable to notice the provision of Order 8 Rule 6-A of the CPC which provides as under:-

“6-A. 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.”

- 9) A careful perusal of Order 8 Rule 6-A(1) of the CPC would show that the parties are entitled to file counter-claim provided that the cause of action must have accrued to the defendant either before the defendant had delivered his defence or before the time extended for delivering his defence has expired.
- 10) The legal position in this regard is also well settled in a catena of decisions of the Supreme Court. Some of them may be noticed profitably and gainfully herein:-

10.1 In the matter of **Mahendra Kumar and Another Vs. State of Madhya Pradesh and others**³ the Supreme Court has clearly held that for filing of the counter-claim under Order 8 Rule 6-A(1), the cause of action must have arisen either before the defendant had delivered his defence or before the time limited for delivering his defence has expired by holding as under:-

“.....What is laid down under Rule 6-A(1) is that a counter-claim can be filed, provided the cause of action had accrued to the defendant before the defendant had 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.”

10.2 In the matter of **Bollepanda P. Poonacha and Another Vs. K.M. Madapa**⁴, it has been held by the Supreme Court that defendant's right to file counter-claim is an additional right and cause of action must accrue either before or after the filing of the suit, but before the defendant has raised his defence and held as under:-

“11. The provision of Order 8 Rule 6-A must be considered having regard to the aforementioned provisions. A right to file counter-claim is an additional right. It may be filed in respect of any right or claim, the cause of action therefore, however, must accrue either before or after the filing of the suit but before the defendant has raised his defence.”

³ (1987) 3 SCC 265

⁴ (2008) 13 SCC 179

10.3 It has also been held that a belated counter-claim must be discouraged by the Court. See **Ramesh Chand Ardawatiya Vs. Anil Panjwani**⁵.

10.4 Recently, in the matter of **Vijay Prakash Jarath** (supra), the Supreme Court has categorically restated the law by holding that as per Rule 6A (1) of Order 8, the cause of action in respect of which a counter claim can be filed, should accrue before defendant has delivered his defence and relied upon earlier judgement of the Supreme Court in **Bollepanda P. Poonacha** (supra).

10.5 In a decision cited by the learned counsel for the respondent No.1 herein/defendant in **SH. Jag Mohan Chawala** (supra), the Supreme Court has also struck the same proposition.

11) Thus, the legal position flowing from the aforesaid binding judgements of the Supreme Court is quite vivid that the defendant has an additional right to file his counter-claim in respect of cause of action for filing counter-claim must have arisen either before the written statement is filed in the suit or within the extended time granted by the trial Court to file written statement.

⁵ (2003) 7 SCC 350

- 12) The aforesaid position of law leaves me to examine the averment of the counter-claim to determine whether the cause of action for filing counter-claim in this case has arisen within the stipulated time by Order 8 Rule 6A of the CPC and as per law laid-down by Their Lordships of the Supreme Court in above-mentioned judgements.
- 13) Counter-claim was filed by defendant No.1 on 19.6.2008. Paragraph 7 of the counter-claim states as under:-
- “7. प्रतिदावा प्रस्तुत करने का कारण माह मार्च-अप्रैल 2008 को मौजा विधाडीह, तहसील मस्तुरी जिला बिलासपुर में उत्पन्न हुआ जो इस माननीय न्यायालय के क्षेत्राधिकार के अंतर्गत है।”
- 14) In the light of legislature mandate enumerated in Order 8 Rule 6-A of the CPC and law laid-down by the Supreme Court in above-mentioned judgements the facts of the present case are considered, it would appear that as per own showing of defendant No.1, cause of action has arisen for filing counter-claim in the month of March-April, 2008, whereas written statement has been filed way back on 9.3.1994. Such a counter-claim is hit by order 8 Rule 6-A as cause of action has arisen much belatedly after filing of the written statement on 9.3.1994 and as such, it is rather 14 years after filing of the written statement which Their Lordships of the Supreme Court

have held that such a counter-claim is not maintainable as per Order 8 Rule 6-A of the CPC.

16) Thus, I undoubtedly and unhesitatingly hold that counter-claim as framed and filed on 19.6.2008 is not maintainable. As a fall out and consequence of the aforesaid discussion, the counter-claim as framed and filed is held to be not maintainable as cause of action for filing counter-claim has arisen much after the filing of the written statement, therefore, it is held to be not maintainable and such a counter-claim is hereby dismissed as not maintainable in law. However, this dismissal of counter-claim would not bar the defendant No.1 to institute independent suit in accordance with law.

18) The civil revision is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K Agrawal)
Judge