

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 777 of 2015

1. Gajadhar S/o Ramchandi, aged about 40 years, Caste-Cherwa, R/o Village-Mahuapara (Parcha Basti), Police Station and Tahsil-Baikunthpur, District-Koriya (Chhattisgarh).....Defendant No. 1

---- Petitioner

Versus

1. Ramprasad S/o Late Shivcharan, aged about 55 years, Caste-Cherwa, R/o Village-Dudhaniya Khurd, Police Station and Tahsil-Sonhat, District-Koriya (Chhattisgarh).....Plaintiff
2. Samal Prasad S/o Late Shivcharan, aged about 50 years, R/o Village-Dudhaniya Khurd, Police Station and Tahsil-Sonhat, District-Koriya (Chhattisgarh).....Defendant
3. Shivprasad S/o Late Shivcharan, aged about 50 years, R/o Village-Dudhaniya Khurd, Police Station and Tahsil-Sonhat, District-Koriya (Chhattisgarh).....Defendant
4. Smt. Shanti Bai W/o Balamsai, aged about 50 years, R/o Village-Dudhaniya Khurd, Police Station and Tahsil-Sonhat, District-Koriya (Chhattisgarh).....Defendant
5. Smt. Mankunwar W/o Ramprasad, aged about 65 years, Caste-Cherwa, R/o Village-Majhartola Katgodi, Police Station and Tahsil-Sonhat, District-Koriya (Chhattisgarh).....Defendant
6. Dhansai S/o Manbodh, aged about 60 years, Caste-Cherwa, R/o Village-Dudhaniya Khurd, Police Station and Tahsil-Sonhat, District-Koriya (Chhattisgarh).....Defendant
7. State of Chhattisgarh, through the Collector, Koriya (Chhattisgarh).....Defendant

---- Respondents

For Petitioner – Mr. Pushpendra Kumar Patel, Advocate.
For Respondent No.1 – Mr. Malay Shrivastava, Advocate.
For Respondent No.7 – Ms. M.Asha, Panel Lawyer.
For Respondents 2 to 6 – None, though served.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

22/03/2016

1. Heard the matter on admission.
2. Facts, in brief, required for disposal of the instant WP(227) are that Civil Suit No.30A/11 (Ramprasad Vs. Gajadhar and 6 others) is pending before the Civil Judge Class-I Baikunthpur, District Koria, C.G. In the said proceeding the

petitioner's/defendant D-1's opportunity to file written statement has been closed by the trial Court vide order dated 15-01-2013. Against the said order the petitioner/defendant D-1 preferred WP(227) No.148/2013. Vide order dated 24-09-2013, this Court held that since there is no any illegality, irrationality, procedural impropriety or error on the face of the record warranting interference with it in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, as the petition failed and the same was dismissed. Against the order of this Court, the petitioner preferred special leave to appeal before Hon'ble the Apex Court. Thereafter, on 18-11-2013 the petitioner/defendant D-1 filed cross-suit. The Court below vide order dated 04-08-2015 disposed of interim application No.8 as preliminary objection regarding the rejection of the said cross-suit as the same is not maintainable as cross-suit is like written statement. Against the said order the petitioner has preferred the instant WP(227) wherein it is prayed that under the provision of Section3(2)(b) of the Limitation Act, 1963, a counter claim is treated as suit as the same is filed within three years from the date of accrual to him of the right to sue. It is further prayed that as the petitioner/defendant D-1 has right to file cross-suit, the same may be accepted and the order passed by the Court below be quashed, the counter claim as filed before the Court below be taken into consideration.

3. Heard learned counsel for the petitioner, perused the impugned order and the documents annexed along with the instant WP(227).
4. Learned counsel for the petitioner duly supported the grounds taken in the instant WP(227) and submitted that as per aforementioned provision of law, the petitioner may be permitted to file counter claim.
5. For relevance, Order 8 Rule 1 and Order 8 Rule 6A of the Code of Civil Procedure, 1908 (in short 'the Code') is required to be perused which read as under:-

“ORDER VIII- [WRITTEN STATEMENT, SET-OF AND COUNTER-CLAIM]

1. **Written statement**— The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his deference:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

xxxxxx xxxxxx xxxxxx
xxxxxx xxxxxx xxxxxx

“6A. **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.”

6. Section 3(2)(b) of the Limitation Act, 1963 is also relevant for the matter which reads as under:-

3. **Bar of limitation.**— (1) xxxxxx xxxxxx xxxxxx

(2) For the purposes of this Act –

(a) xxxxxx xxxxxx xxxxxx

(b) any claim by way of set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted–

(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;

(ii) in the case of a counter claim, on the date on which the counter claim is made in court;”

7. From perusal of the facts as aforementioned, it goes to show that the trial Court vide order 15-01-2013 closed the opportunity to file written statement of the petitioner. Against the said order, the petitioner preferred WP(227) No.148/2013. This Court also affirmed the order passed by the trial Court on 15-01-2013. Against the said appreciation of this Court, the petitioner/defendant D-1 preferred special leave to appeal before Hon'ble the Apex Court. With this, the order passed by the Court below dated 15-01-2013 attains finality after affirmation of the said order in WP(227) No.148/2013. Thereafter, a cross-suit has been filed on 18-11-2013. From perusal of the impugned order, it goes to show that after the limitation as in Order 8 Rule 1 of the Code alleged cross-suit has been filed, the same is as written statement. The grounds taken on behalf of the petitioner regarding the applicability of Section 3(2)(b) of the Limitation Act, 1963 is not applicable with the facts of the present matter whereby the opportunity to file written statement has been closed by the trial Court affirmed by the High Court and by filing the cross-suit in the matter the petitioner/defendant D-1 has taken the entire pleadings of the written statement, the said was rejected by the trial Court. On due consideration, I do not see any illegality, impropriety and irrationality or error on the face of the record warranting interference with the impugned order dated 04-08-2015 regarding I.A.No.8. Limitation is prescribed to file written

statement, provision of Order 8 Rule 6A of the Code is also applicable for filing of counter claim along with written statement, both are applicable together.

8. In the considered view of this Court, as the trial Court has not committed any error in allowing the preliminary objection I.A.No.8, in view of this Court, the instant WP(227) is having no substance, hence, the same is hereby dismissed as not maintainable.

9. No order as to cost.

10. Before part with the order, one more observation this Court wants to add that during hearing on I.A.No.8 before the trial Court, before filing of the said counter claim the petitioner/defendant D-1 has not disclosed the order dated 24-09-2013 passed by this Court in WP(227) No.148/2013 thereby concealed this fact.

11. The petition dismissed.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE