

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 42 OF 2016

Dattaprasad Shivanand Sawardekar
Son of Shivanand Sawardekar
Aged 36 years
Occupation business,
Residing at House no. 216,
Dattawasdi, Sanvordem, Goa.

..... Petitioner

V e r s u s

1. Indian Oil Corporation Limited
A Company registered under
Companies Act, 1956, having
Office at C-21, Bogda Road,
Vasco da Gama, Goa.
2. Collector of South Goa,
Mathany Saldanha Administrative
Complex, Margao, Goa.
3. Additional Collector I
of South Goa,
Mathany Saldanha Administrative
Complex, Margao, Goa.
4. M/s. Laxmi Auto Care Centre
A registered partnership firm
with office at Talaulikar Building
Yeshwantnagar, Tisk, Ponda, Goa.
5. State of Goa,
Through the Chief Secretary,
Secretariat,
Porvorim, Goa,
Mapusa, Bardez, Goa.

..... Respondents

Mr. Parag Rao, Advocate for the Petitioner.

Mr. Nigel Da Costa Frias, Advocate for the Respondent no. 1.

Mr. Vishwadh Sardessai, Addl. Government Advocate for the Respondent nos. 2, 3 and 5.

Mr. S. G. Desai, Senior Advocate with Ms. Ketki Pednekar, Advocate for the Respondent no. 4.

Coram :- F. M. REIS, J

Date : 9th December, 2016

ORAL ORDER

Heard Mr. Parag Rao, learned Counsel appearing for the Petitioner, Mr. Nigel Da Costa Frias, learned Counsel appearing for the Respondent no. 1, Mr. V. Sardessai, learned Addl. Government Advocate appearing for the Respondent nos. 2, 3 and 5 and Mr. S. G. Desai, learned Senior Advocate appearing for the Respondent no. 4.

2. The challenge in the above Revision Application is to the Order dated 29.07.2016 whereby an application filed to reject the Counter Claim came to be dismissed.

3. Briefly, it is the contention of the Petitioner that the subject matter of the Counter Claim is a petrol pump situated at Ponda which is solely against the Petitioner herein filed before the learned District Judge who has no jurisdiction to entertain such Counter Claim. It is contended by the Petitioner that the Counter claim deserves to be rejected.

4. The Respondents opposed the said application and disputed the said contention and pointed out that the subject matter of the suit as well as the Counter claim is the same and, as such, to avoid multiplicity of the proceedings, the Defendant no. 1/the Respondent no. 1 herein, is entitled to file such Counter Claim.

5. The facts of the case filed by the Petitioner relevant to decide the above Revision are that the Petitioner filed a Civil Suit no. 5/2014/A against the

Respondent no. 4 and its Partners for specific performance of a contract and alternately for recovery of money as well as for a perpetual injunction wherein some interim reliefs have been granted. It is further their case that the Respondent no. 4 is the owner of the property surveyed under no.189/7 in the Village of Ponda, wherein it was agreed to sell the entire establishment i.e. the property along with the petrol pump to the Petitioner in January 2012 towards which the consideration was fixed at Rs.1,30,00,000/-. It is further contended by the Petitioner that pursuant to the said Agreement, the Petitioner was put in possession of the said property along with the petrol pump. It is further their case that the Petitioner filed another suit against the Respondents more particularly seeking a relief of injunction against the Respondent nos. 2 and 3 from dispossessing the Petitioner or providing police protection to the Respondent no. 4 to seek forcible eviction of the Petitioner. In the said suit, Respondent no. 1 filed its written statement inter alia contending that it was in possession of the suit property and contending that the Agreement dated 05.07.2012 entered into by the Petitioner and the Respondent no. 4 and its Partners was contrary to the dealership Agreement dated 19.03.2001. It was also their case that by communication dated 06.06.2015, it had terminated the dealership agreement and, as such, the Respondent no. 1 raised a Counter Claim against the Petitioner and sought for a relief of injunction. It is further their case that the Respondent nos. 2 and 3 filed their common written statement, inter alia, contending that now that the matter was subjudice they would not interfere with the dispute of ownership and running of the petrol pump and that they would intervene only to prevent breach of peace and to resolve any law and order problem. The Respondent no. 4 also filed their written statement disowning the Agreement dated

05.07.2012. Thereafter on 27.10.2015, the Petitioner filed the said application for rejection of the Counter Claim and by the impugned Order the application came to be rejected.

6. The learned Judge whilst passing the impugned Order noted that the suit filed by the Petitioner is for permanent injunction and other reliefs in respect of the petrol pump situated at Tisk, Ponda, and the Counter Claim filed by the Respondent no. 1 is also by way of a permanent injunction to restrain the Petitioner, his agents, etc., from interfering with the suit premises. The learned Judge noted that the suit filed by the Petitioner is the same subject matter which is situated at Ponda and, as such, the learned Judge rejected the contention of the Petitioner that the Counter claim was in respect of a different subject matter. The learned Judge as such dismissed the application.

7. Mr. Parag Rao, learned Counsel appearing for the Petitioner, has pointed out that it cannot be disputed that the Counter Claim is not within the pecuniary jurisdiction of the Court and, as such, the learned Judge was not justified to dismiss the application filed by the Petitioner. It is further pointed out that the Respondent no. 1 has filed the Counter Claim only against the Petitioner and, as such, according to him, the suit filed against the Government authorities essentially the Respondent nos. 2 and 3 are not necessary nor proper parties to the Counter Claim filed by the Respondent no. 1. It is further pointed out that by filing the Counter Claim in the suit filed by the Petitioner, a right of appeal has been taken away as the claim in the counter-claim has to be filed before the Civil Court and, as

such, the learned Judge has acted in material irregularity affecting its jurisdiction whilst passing the impugned Order. The learned Counsel has taken me through the provisions of Order 8 Rule 6A , 6B and 6C and other relevant provisions of law to pointed out that the Counter Claim filed by the Respondent no. 1 was not maintainable before the District Court. Learned Counsel as such submits that the impugned Order be quashed and set aside and the Counter Claim filed by the Respondent no. 1 be accordingly rejected.

In support of his submissions, learned Counsel has relied upon the Judgments reported in **(2008) 13 SCC 179** in the case of ***Bollepanda P. Poonacha & anr. vs. K. M. Madapa***, **(1996) 4 SCC 699** in the case of ***Jag Mohan Chawla & anr. vs. Dera Radha Swami Satsang & Ors.***, **(2013) 8 SCC 769** in the case of ***Jitendra Kumar Khan & Ors. vs. Peerless General Finance & Investment Company Limited & Ors.*** and **2015 (6) Bom. C. R. 443** in the case of ***Amit Balasaheb Takte & Ors. vs. Krishna Raosaheb Pawar & Ors.***

8. On the other hand, Shri Nigel Da Costa Frias, learned Counsel appearing for the Respondent no. 1, has submitted that the dispute between the parties is essentially the property and the Petrol Pump in question and such dispute is between the Petitioner, Respondent no. 1 and the Respondent no. 4 and their Partners. It is further pointed out that the Respondent nos. 2 and 3 have no connection with the dispute between the said parties and in fact would act upon the Orders passed in the proceedings filed before the competent forum adjudicating such dispute. It is further submitted that the Petitioner by mischievous exercise had sought to file a suit before the learned District Court when admittedly the

Respondent nos. 2 and 3 have no personal interest in the dispute between the private parties, thereby causing grave prejudice to the case of the Respondent no. 1 as the contentions raised by the Petitioner are to be adjudicated in the same proceedings. Learned Counsel further submits that there is no bar to file a Counter Claim, when the reliefs are not against all the parties to the suit. Learned Counsel further submits that there is no jurisdictional error committed by the learned Judge which calls for interference of this Court and, as such, the Revision deserves to be rejected. It is further submitted that in any case the District Court is a Court of Original Civil Jurisdiction and, as such, it cannot be said that the District Court lacks inherent jurisdiction to decide the suit.

In support of his contentions, the learned Counsel has relied upon the Judgment of this Court reported in **AIR 1992 BOMBAY 422** in the case of **Datta Bandu Sadale & Ors. vs. Sridhar Payagonda Patil & Ors** and Judgment reported in **AIR 1988 BOMBAY 380** in the case of **Barthels and Luders GMBH vs. M. V. "Dominique"**.

9. Mr. S. G. Desai, learned Senior Advocate appearing for the Respondent no. 4, has pointed out that the suit filed by the Petitioner itself is an abuse to the process of Court and, according to him, the suit has been filed with malafide motives by making the Respondent nos. 2 and 3 as parties to the suit when they have no interest at all in the dispute between the Petitioner and the Respondent no. 4. The learned Senior Advocate further pointed out that the dispute between the parties has to be decided in one proceedings and, as such, the question of contending that the Counter Claim has to be adjudicated separately

is totally misconceived. Learned Senior Advocate as such pointed out that the Revision be accordingly rejected.

In support of his submissions, the learned Senior Advocate has relied upon the Judgment of this Court reported in **AIR 1965 SC 1449** in the case of **Raja Soap Factory & Ors. vs. S. P. Shantharaj & Ors.** and Judgment reported in **AIR 2000 Bom 356** in the case of **Romila Jaidev Shroff vs. Jaidev Rajnikant Shroff.**

10. I have considered the submissions of the learned Counsel. I have also gone through the records. Based on the rival contentions, it cannot be disputed that the subject matter of the suit filed by the Petitioner and the Counter Claim filed by the Respondent no. 1 are the same. The suit is basically claiming a right to a property and to a petrol pump wherein the reliefs sought by the Petitioner is for injunction. The Respondent no. 1 in the Counter Claim in respect of the same subject matter, also sought for injunction. The material dispute raised by the Petitioner and the Respondent no. 1 is also identical and, as such, on this assumption, I shall proceed to examine whether the Petitioner is entitled to contend that the Counter Claim filed by the Respondent no. 1 deserves to be rejected.

11. The Petitioner himself has approached the District Court to get an adjudication on the same subject matter in dispute between the Petitioner and the private parties. It is not in dispute that the Respondent nos. 2 and 3 have no direct interest in such suit and would act upon an adjudication on such dispute. Making the Respondent nos. 2 and 3 as parties to the suit and invoking the jurisdiction of the learned District Judge on such basis, by itself, cannot deprive the Respondent

no. 1 to file the Counter Claim against the Petitioner when it is duly established that the subject matter of the suit and that of the Counter Claim is identical. Order 8 Rule 6A, 6B and 6C of the Civil Procedure Code reads thus :

“6-A Counter claim by defendant:

(1) A defendant in a suit may, in addition to his right of pleading as 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 counterclaim 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-B. Counter claim to be stated :

Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

6-C. Exclusion of counter-claim :

Where a defendant sets up a counter claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded and the Court may, on the hearing of such application make such order as it thinks fit.

12. Consequent upon the introduction of the said provisions, Order 20 Rule 19 also came to be amended which now reads thus :

“Order 20, Rules 19 (1) and (2) :

(1) Where the defendant has been allowed a set off (or counter-claim) against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

(2) Any decree passed in a suit in which a set off (or counter-claim) is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off (or counter claim) had been claimed.”

Reading the said provisions as provided in the Civil Procedure Code, it clearly shows that a 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 the counter-claim. Order 8 Rule 6A-(3) entitles the Petitioner to file a written statement in answer to the counter-claim and sub-rule 4 thereof provides that the counter-claim shall be treated as a plaint and govern the Rules applicable to a plaint. This would show that a counter-claim is not a separate suit, but a cross suit. It clearly shows that when the subject matter of the suit and the counter-claim is the same, it has to be adjudicated in the same suit. The object of the amendments introducing Rules 6A to 6G to Order 8 of the Civil Procedure Code is to confer a statutory right to the Defendant to set up a counter-claim independent of the claim on the basis of which the Plaintiff filed the suit on its own cause of action. The purpose is essentially to avoid multiplicity of proceedings by relegating the Defendant to an independent suit so that both the suit and the counter-claim are decided together and have them disposed of in the same trial. In such circumstances, I find that the contention of Mr. P. Rao, learned Counsel appearing for the Petitioner that the counter-claim lacks pecuniary jurisdiction and, as such, deserves to be rejected cannot be accepted. In fact it is not the case of the Petitioner that the counter-claim filed by the Respondent no. 1 ought not to be disposed of as a counter-claim but by an independent suit in terms of Order 8 Rule 6(C) of the Civil Procedure Code. The legislative view as pointed out herein above is that the suit and the counter-claim have to be decided in the same suit and same trial. In the present case, as pointed out herein above, it is not disputed that there is an identity of the subject matter of the suit and the counter-claim filed by the Respondent no. 1. As such, the counter-claim filed by the Respondent no. 1 has to be adjudicated in the same suit filed by the Petitioner.

13. The observation of the Apex Court in the Judgment reported in **(2015) 2 SCC 682** in the case of ***Rajni Rani & anr. vs. Khairati Lal & Ors.*** , at para 9.6 would be material which reads thus :

“9.6. On a plain reading of the aforesaid provisions it is quite limpid that a counterclaim preferred by the defendant in a suit is in the nature of a cross-suit and by a statutory command even if the suit is dismissed, counterclaim shall remain alive for adjudication. For making a counterclaim entertainable by the court, the defendant is required to pay the requisite court fee on the valuation of the counterclaim. The plaintiff is obliged to file a written statement and in case there is default the court can pronounce the judgment against the plaintiff in relation to the counterclaim put forth by the defendant as it has an independent status. The purpose of the scheme relating to counterclaim is to avoid multiplicity of the proceedings. When a counterclaim is dismissed on being adjudicated on merits it forecloses the rights of the defendant. As per Rule 6-A(2) the court is required to pronounce a final judgment in the same suit both on the original claim and also on the counterclaim. The seminal purpose is to avoid piecemeal adjudication. The plaintiff can file an application for exclusion of a counterclaim and can do so at any time before issues are settled in relation to the counterclaim. We are not concerned with such a situation.”

14. With regard to the contention of Mr. P. Rao, learned Counsel appearing for the Petitioner, that the District Court has no pecuniary jurisdiction to

decide the counter-claim as there is no relief sought by the Respondent no. 1 as against the Respondent nos. 2 and 3, I find that the relief claimed against the Respondent nos. 2 and 3 in the suit is on account of an apprehension that police protection may be sought by the Respondent nos. 1 and 4 based on the dispute under consideration between the Petitioner and the Respondent nos.1 and 4. The relief sought by the Respondent no. 1 against the Petitioners is also for an injunction in respect of the same subject matter of the suit. There can be an occasion wherein to enforce any Orders passed in the Counter-claim, the parties may require to seek police protection and, in such circumstances, the Respondent nos. 2 and 3 can be treated as proper parties to such counter-claim filed by the Respondent no. 1.

15. As already pointed out herein above, as the Petitioner himself has chosen the pecuniary jurisdiction of the District Court, it is not open to the Petitioner to now contend that in respect of the same subject matter, the Respondent no. 1 is not entitled to file a counter-claim as a right of appeal has been lost. In any event, the District Court is the Court of original civil jurisdiction and, as such, it cannot be said that District Court has no inherent jurisdiction to decide the suit. In such circumstances, I find that there is no infirmity committed by the learned Judge whilst dismissing the application in question filed by the Petitioner. The Judgments relied upon by Mr. Parag Rao, learned Counsel appearing for the Petitioner are not at all applicable to the facts of the present case. As pointed out herein above, the subject matter of the suit and the counter-claim is identical. As such, I find that there is no jurisdictional error committed by the

learned Judge whilst disposing of the application filed by the Petitioner.

16. In view of the above, the Revision Petition stands accordingly rejected.

F .M. REIS, J.

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