

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 28.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.981 of 2016
& C.M.P.No.5548 of 2016

1.Mrs.K.Madhu

2.Mr.M.Kiranraj Jain

... Petitioners

vs.

M/s.Medusind Solutions India Pvt. Ltd.,

Having its Regional Office at 8th Floor

Prestige Centre Court

The Forum Vijaya Mall

No.183, NSK Salai, Arcot Road

Vadapalani, Chennai – 600 026

Rep. By its Authorised Signatory

Ms.Lakshmi Menon

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the XV Assistant City Civil Court, Chennai passed in Counter Claim SR.No.33240 of 2015 in O.S.No.1768 of 2015 dated 07.03.2016.

For Petitioners : Mr.A.Ilaya Perumal

ORDER

This matter stands listed today for admission. The defendants in the original suit O.S.No.1768 of 2015 on the file of XV Assistant Judge, City Civil Court, Chennai are the petitioners in the present revision preferred under Article 227 of the Constitution of India. The respondent

herein filed the above suit for recovery of a sum of Rs.9,72,000/- together with interest at the rate of 12% per annum from the date of plaint till realisation. The said claim was made towards the re-fund of the advance amount paid as security deposit under a lease agreement, based on which the respondent /plaintiff had been inducted as tenant. The prayer for permanent injunction not to alienate or encumber or rent out the suit property without repaying the deposit has also been made.

2. In the said suit, the revision petitioners herein /defendants filed their written statement on 11.07.2015. Thereafter, on 23.07.2015, they filed a separate counter claim claiming a sum of Rs.19,13,871/- as arrears of rent, monthly maintenance charges and also damages for the damage allegedly committed to portions of the suit property. In addition, they had also sought for a direction to the respondent herein/plaintiff to continue to pay the monthly rent and monthly maintenance charges till the possession of the property would be handed over to the revision petitioners / defendants.

3. The said counter claim was returned by the trial Court by an order dated 07.03.2016 holding that the counter claim exceeded the pecuniary jurisdiction of the trial Court. It is as against the said order, the present Civil Revision Petition under Article 227 of the Constitution of India came to be preferred.

4. The arguments advanced by Mr.A.Ilaya Perumal, learned counsel for the petitioners are heard. The materials placed before this Court in the form of returned counter claim and the copies of the documents produced in the form of typed-set of papers are also perused.

5. Upon such hearing and after such perusal, this Court is of the considered view that there is no merit in the revision and the revision does not even merit admission. The reasons are as follows:

1) When a claim either in the form of a plaint or in the form of a counter claim is made and the Court in which such claim is made does not have the pecuniary jurisdiction to try the suit instituted based on such plaint or counter claim, then it shall be proper for the Court to return the plaint or the counter claim, which shall be treated as a separate plaint so far as the counter claim is concerned, for presentation in the proper Court. The learned trial Judge has done the same thing in passing the impugned order of return. For better appreciation, the impugned order of return is reproduced hereunder:

"Returned

This Court has no pecuniary jurisdiction to try the counter claim. Hence, the counter claim is returned in view of the proviso to Order VIII Rule 6A (1) CPC."

Of course the said reason assigned by the trial Court for returning the counter claim cannot be said to be erroneous. However, the learned trial

Judge has failed to notice the fact that the counter claim filed subsequent to the presentation of the defence plea is not at all maintainable and deserves to be rejected. In the case on hand, written statement was filed on 11.07.2015 and the counter claim came to be made separately on 23.07.2015 i.e., subsequent to the filing of the written statement.

Order VIII Rule 6A reads as follows:

"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 complaints.”

2) The proviso to Clause (1) makes it abundantly clear that a counter claim shall not exceed the pecuniary limits of the jurisdiction of the Court. That itself shall be enough for the rejection of the counter claim. If the defendant does not come forward to restrict his counter claim upto the upper limit of the pecuniary jurisdiction of the Court, instead of returning the counter claim, the Court can reject the same relying on the proviso to Sub-Clause (1) of Rule 6A of Order VIII.

3) Yet another major flaw in this case is that the counter claim was not made before the petitioners/defendants delivered their defence, namely written statement. If at all the counter claim is incorporated in the written statement, the same will not come under the mischief of the said provision. When it is sought to be made in a separate pleading it ought to have been made before the filing of the written statement or at least along with the written statement. There is a clear bar provided in Sub-clause (1) to Rule 6A that such counter claim should be filed before the defendant has delivered his defence or before the time limited in delivering defence has expired. Since the counter claim came to be made subsequent to the filing of the written statement, the same could have been rejected on that score alone. In any event, the order of the trial Court refusing to entertain the counter claim cannot be successfully challenged in this revision. Hence, the revision fails and the same is

dismissed at the threshold.

Accordingly, the Civil Revision Petition is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

28.03.2016

Index : Yes/No
Internet : Yes/No

gpa

To

XV Assistant City Civil Court
Chennai

P.R.SHIVAKUMAR, J.

gpa

C.R.P (PD) No.981 of 2016 and
C.M.P.No.5548 of 2016

Dated : 28-03-2016