

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4988 of 2013

ORDER:

This revision, under Article 227 of the Constitution of India, is filed challenging the order dated 03.06.2013 in I.A.No.130 of 2013 in O.S.No.1868 of 2011 on the file of X Junior Civil Judge, City Civil Court, Hyderabad, dismissing the petition filed by the petitioners, under Section 151 CPC, to receive the counter-claim already filed, by treating and adjusting the court fee already paid at the time of filing of written statement-cum-counter claim, as court fee for the counter claim by permitting to make necessary corrections in the column pertaining to the amount of claim and court fee.

It is alleged in the petition filed before the Trial Court that the defendant filed written statement, along with the counter claim, in a suit for permanent injunction, claimed damages at the rate of Rs.10,000/- p.m. but the trial Court did not register the counter claim, thereupon, the petitioner filed the present petition restricting his claim to Rs.6,000/- p.m. to bring the claim within the pecuniary jurisdiction of the Court and sought for the above relief.

Respondent filed counter opposing the petition on various grounds. The Trial Court dismissed the petition observing that the claim of the petitioners was "refused".

Aggrieved by the order of the Trial Court, the present revision is filed, under Article 227 of the Constitution of India,

contending that the Trial Court could have permitted the petitioners to make necessary amendments reducing the claim for damages from Rs.10,000/- to Rs.6,000/- by exercising inherent jurisdiction under Section 151 CPC; when the Trial Court did not dismiss or reject the counter claim, the order, not registering the counter claim is not a decree within Section 2(2) CPC and it is not appealable; and mere commencement of trial and mere examination of witnesses is not a ground to dismiss the application filed by the petitioners under Section 151 CPC; and drew attention of this Court to the judgment of the Supreme Court in **Vijay Prakash Jarath v. Tej Prakash Jarath**¹.

Sri A.Sameer Kumar, learned counsel for the respondent, opposed the petition on various grounds. One of the ground is that, when the Trial Court did not register the claim, the petitioners could have taken steps earlier but, after a lapse of one year, they are not entitled to file petition seeking such amendment and the Trial Court rightly declined to exercise inherent jurisdiction under Section 151 CPC and prayed to dismiss the petition.

Admittedly, the petitioners filed a petition, under Section 151 CPC, to treat counter claim made in the written statement by paying court fee for an amount of Rs.1,20,000/, @ Rs.10,000/- p.m. and filed the petition to permit them to restrict claim to Rs.6,000/- as damages but

¹ AIR 2016 SC 1304

the Trial Court did not register the counter claim since it is on par with a separate suit but no steps were taken by the petitioners to make necessary amendments. However, the court fee paid on the counter claim is credited to the suit but the reason for failure to register the counter claim is that it exceeds the pecuniary jurisdiction of the Trial Court. In such a case, the Court below ought not to have refused or returned by exercising power under Order 7 Rule 10 CPC but the Court below did not exercise its power under Order 7 Rule 10 CPC. In those circumstances, failure to register the counter claim would not come in the way of the petitioners since it was part of the written statement and court fee was received by the Trial Court. Therefore, the order passed by the Trial Court declining to accede to the request of the petitioner is erroneous.

The other ground for dismissal is that the trial has commenced after framing issues and PW.1 was partly examined before the Trial Court, but that is not a ground. In view of the law declared in **Vijay Prakash Jarath** (1 supra), wherein the Supreme Court, while dealing with similar situation with reference to Order VIII Rule 6A, held as follows:

“A perusal of Sub-clause (1) of Section 6A of Order VIII, leaves no room for any doubt, that the cause of action in respect of which a counter claim can be filed, should accrue before the defendant has delivered his defence, namely, before the defendant has filed a written statement. The instant determination of ours is supported by the conclusions drawn in [Bollepanda P. Poonacha & Anr vs. K.M.Madapa](#) (AIR 2008 SC 2003), wherein this Court observed as under:

“The provision of Order 8 Rule 6-A must be considered having regard to the aforementioned provisions. A right to file counterclaim is an additional right. It may be filed in respect of any right or claim, the cause of action therefor, however, must accrue either before or after the filing of the suit but before the defendant has raised his defence. The respondent in his application for amendment of written statement categorically raised the plea that the appellants had trespassed on the lands in question in the summer of 1998. Cause of action for filing the counterclaim inter alia was said to have arisen at that time. It was so explicitly stated in the said application. The said application, in our opinion, was, thus, clearly not maintainable. The decision of Ryaz Ahmed (supra) is based on the decision of this Court in Baldev Singh Vs. Manohar Singh [(2006) 6 SCC 498].” (emphasis is ours)

It is quite apparent from the factual position noticed hereinabove, that after the issues were framed on 18.10.1993, the counter claim was filed by the appellants before this Court (i.e. by defendant Nos.3 and 4 before the trial court) almost two and a half years after the framing of the issues. Having given our thoughtful consideration to the provisions relating to the filing of counter claim, we are satisfied, that there was no justification whatsoever for the High Court to have declined, the appellant before this Court from filing his counter claim on 17.06.1996, specially because, it is not a matter of dispute, that the cause of action, on the basis of which the counter claim was filed by defendant Nos.3 and 4, accrued before their written statement was filed on 11.11.1992. In the present case, the respondent-plaintiff's evidence was still being recorded by the trial court, when the counter-claim was filed. It has also not been shown to us, that any prejudice would be caused to the respondent-plaintiff before the trial court, if the counter-claim was to be adjudicated upon, along with the main suit. We are of the view, that no serious injustice or irreparable loss (as expressed in paragraph 15 of Bollepanda P.Pooncha's case), would be suffered by the respondent-plaintiff in this case.

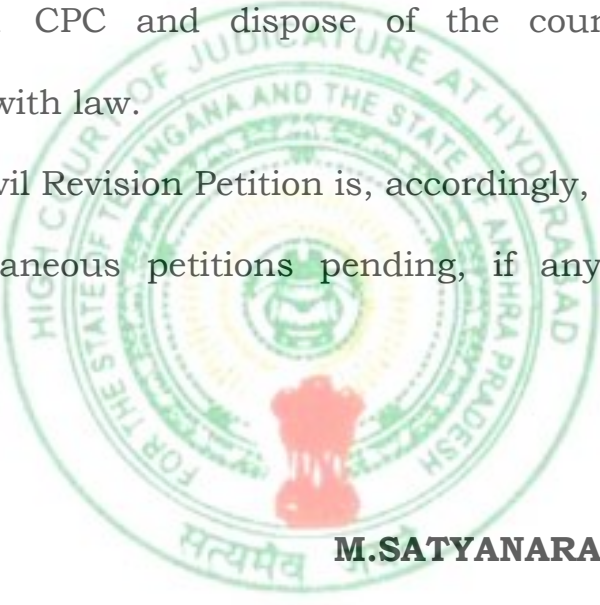
For the reasons recorded hereinabove, we set aside the impugned order passed by the High Court dated 02.01.2008, and restore the order passed by the trial court dated 28.10.1996.....”

(emphasis supplied)

In view of the law declared by the Apex Court in **Vijay Prakash Jarath** (1 supra) declining to accede to the request of the counsel for the petitioners is illegal, and the Trial Court failed to exercise its inherent jurisdiction under Section 151 CPC, the order of the Trial Court is set aside permitting the petitioners to take necessary steps to reduce the counter claim to Rs.6,000/- from Rs.10,000/-. The Trial Court is directed to permit the petitioners to carry out necessary amendments in the counter claim by exercising power under Section 151 CPC and dispose of the counter claim in accordance with law.

The Civil Revision Petition is, accordingly, allowed.

Miscellaneous petitions pending, if any, shall stand dismissed.



M.SATYANARAYANA MURTHY,J

Date:09.12.2016
usd