

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

CRP Nos.6029 & 6021 of 2016

Between:

M/ s. Srinivasa Civil Works Pvt. Limited

...Petitioner

AND

\$ M/ s. Gayatri Projects Limited & others

...Respondents

DATE OF JUDGMENT PRONOUNCED: 04-04-2017

SUBMITTED FOR APPROVAL:

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

A. RAJASHEKER REDDY, J

*THE HON' BLE SRI JUSTICE A. RAJASHEKER REDDY

+CRP Nos.6029 & 6021 of 2016

%04-04.2017

M s. Srinivasa Civil Works Pvt. Limited

...Petitioner

VERSUS

\$ M s. Gayatri Projects Limited & others

...Respondents

< GIST:

> HEAD NOTE:

! Counsel for Petitioner: Sri Eranki Phani Kumar

^Counsel for Respondents: Sri S. Rambabu for R-1

? Cases referred

1. AIR 2016 SC 1304
2. 2006 (12) SCC 734
3. AIR 2011 SC 785
4. AIR 1996 SC 2222



HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

CRP Nos.6029 OF 2016 & 6021 OF 2016

ORDER:

Plaintiff is the 1st respondent herein. Defendants 1 to 3 are respondents 2 to 4 and revision petitioner is 4th defendant in OS Nos.7 and 2 of 2007 on the file of II Addl. District Judge, Karimnagar at Jagtial. For convenience, parties hereinafter will be referred to as they were arrayed in the suits.

2. A short, yet a contentious question arises for consideration in these civil revision petitions.

3. Two suits were filed by the plaintiff being suit OS Nos.7 of 2007 and 2 of 2007 on the file of II Addl. District Judge, Karimnagar at Jagtial against defendants 1 to 3 for recovery of an amount of Rs.5,00,00,000/- and Rs.14,00,00,000/- respectively under various counts in relation to execution of works viz., improvements, repairs and treatments of slips on Kakatiya Canal from km (-) 0.370 to km 68.00 and rehabilitation and modernization of distributary system from D/5 to D/29 of Kakatiya Canal including minor and sub-minors vide package no.N4-11A of SRSP. Plaintiff states that there is a concluded contract with defendant no.2 in relation to various works, particular details whereof are mentioned in the plaints

filed along with the suits. Plaintiff in a bid to execute the works, engaged 4th defendant (petitioner herein) as sub-contractor and 4th defendant is said to have executed certain works in relation to the items of the concluded contract between the plaintiff and the 2nd defendant-Superintending Engineer, I & CAD, Godavari Valley Circle-I, SRSP Dam site. Disputes arose with regard to payment of certain items of work mentioned in the plaints, which made the plaintiff to file the above suits. Pending adjudication of the suits, the 4th defendant sought to come on record as co-plaintiff on the ground that major part of the contract works of the defendants under the concluded contract entered into between the plaintiff and the 2nd defendant were executed by him and by other third parties. Two interlocutory applications filed by 4th defendant being IA Nos.312 and 313 of 2012, under Order 1, Rule 10 CPC, were dismissed by the trial Court, against which, two revision petitions were preferred being CRP Nos.6310 and 6365 of 2013. This Court by order dated 20-07-2017 allowed the said revisions and permitted the 4th defendant to come on record as co-defendant along with defendants 1 to 3.

4. On being added as a party defendant in the suits, the 4th defendant, not only filed written statement, but also made a counter claim, against the defendants 1 to 3. The reason assigned by the 4th defendant in making such a claim against the co-defendants is that he has executed the works entrusted by the plaintiff with the consent of defendants 1 to 3 and in respect of works executed by him, the defendants have to pay the amounts due and payable to him and not to the plaintiff and what all the plaintiff would be entitled to receive is only royalty on the said amounts.

5. The trial Court by the impugned docket order while taking on file the written statement rejected the counter claim filed by the 4th defendant observing that such a claim against the co-defendants is not permissible under Order 8, Rule 6-A CPC. Hence, the revision petitions.

6. Sri E. Phani Kumar, learned counsel for the 4th defendant-revision petitioner strenuously contended that inasmuch as the suit claim made by the plaintiff includes amount receivable by the 4th defendant and in view of the authorization by the plaintiff under the terms of the contract, the defendants 1 to 3 are under obligation to pay amounts payable to the 4th

defendant after deducting royalty payable to the plaintiff over that amount. Learned counsel also contends that when once the 4th defendant is permitted to come on record as party defendant he is entitled to take all the pleas that are available under law as such, he has an inherent right to make a counter claim as the amounts claimed by the 4th defendant for the work done by it which is also admitted by the plaintiff and authorized the defendant-authorities of the Government to pay the amounts to 4th defendant. In support of his contentions, learned counsel relied on Supreme Court decisions in **VIJAY PRAKASH JARATH vs. TEJ PRAKASH JARATH (AIR 2016 SC 1304) & ROHIT SINGH vs. STATE OF BIHAR (NOW STATE OF JHARKHAND) (2006 (12) SCC 734).**

7. *Per contra*, learned senior counsel Sri D. Prakash Reddy, appearing for learned counsel for the plaintiff-1st respondent contended that the counter claim made by the 4th defendant is not maintainable against the co-defendants as it is against the spirit of Order 8, Rule 6-A CPC and this Court in the order passed in CRP Nos.6310 and 6365 of 2012 only permitted the 4th defendant to come on record as one of the co-defendant to the suits either to support the contest of the other defendants or

to say how the plaintiff is not entitled to the suit claim and that the 4th defendant is bound by order in CRP Nos.6310 & 6365 of 2012. Considering all these aspects of the matter, the trial Court rightly rejected the counter claim and, therefore, the revisions petitions are liable to be dismissed. Reliance is placed on the decision of the Supreme Court in **ROHIT SINGH vs. STATE OF BIHAR (NOW STATE OF JHARKHAND) (2006 (12)**

SCC 734) which decision is also relied on by the learned counsel for the 4th defendant-revision petitioner.

8. In this case the issue that is to be answered can be restricted to whether the 4th defendant can be allowed make a counter claim against the co-defendants.

9. Order 8, Rule 6-A which speaks of counter claim. So far Rule 6-A is concerned reads as under:-

“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.

10. A reading of Clause (1) of Rule 6A makes it clear that the main purpose of setting up a counter-claim is to prevent multiplicity of proceedings between the parties. As can be seen from Clause (4) it has to be treated as a plaint and is governed by the rules applicable to plaints. It has to contain the particulars as in Order 7, Rule 1, C.P.C. among other requirements. Order 8, Rule 6-A CPC does not say as to who shall be parties to the counter-claim. The provisions as to joinder of parties under Order 1, Rule 10, C.P.C. would also apply to counter-claim, no doubt, subject to the condition that persons impleaded are necessary and proper parties for an effective adjudication of the questions involved.

11. The purpose of the provision enabling filing of a counter claim is to avoid multiplicity of judicial proceedings and save

the Court's time as also to exclude the inconvenience to the parties by enabling claims and counter claims, that is, all disputes between the same parties being decided in the course of the same proceedings. (**see GAYATHRI WOMENS WELFARE vs. GOWRAMMA, AIR 2011 SC 785**)

12. The Supreme Court in the case of **JAG MOHAN CHAWLA vs. DERA RADHA SWAMI SATSANG** (AIR 1996 SC 2222)

considered the scope of Rule 6A to 6G of Order 8, CPC and observed as follows:-

"It is true that in money suits, decree must be conformable to Order 20, Rule 18, CPC but the object of the amendments introduced by Rules 6-A to 6-G are conferment of a statutory right on the defendant to set up a counter-claim independent of the claim on the basis of which the appellant laid the suit, on his own cause of action. In sub-rule (1) of Rule 6-A, the language is so couched with words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject-matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action of the same nature as original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires."

13. From the above proposition of law laid by the Supreme Court it is understood that sub-Rule (1) of Rule 6A enables the 4th defendant to make his claim based on independent cause of action that would be the subject matter of an independent suit and the claim made in the counter-claim need not be confined to the cause of action of the same nature as the cause of action of the plaintiff and; it need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff and the only limitation is that the cause of action should arise till the filing of the written statement or till the time fixed for filing the written statement lapses.

14. From the pleadings of the parties it is clear that certain works under the concluded contract between the plaintiff and the defendants 1 to 3 were entrusted to the 4th defendant and pursuant thereto he is stated to have executed the works and there was an authorisation given to the 2nd defendant by the plaintiff to pay the amounts due and payable to the 4th defendant. It appears such an authorisation given by the plaintiff to the 2nd defendant under the concluded contract propelled the 4th defendant to make counter claim against the co-defendants instead of plaintiff. It is also admitted by the

plaintiff in the reply affidavit that he permitted the defendants 1 to 3 to release the payments to the 4th defendant directly. Order 8, Rule 6 CPC contemplates making a counter claim against the claim of plaintiff subject to fulfilment of conditions mentioned under Rule 6-B to G. In the present case, though it appear the counter claim is made against the defendants 1 to 3, but purportedly the claim is against plaintiff as in effect it says that 4th defendant is entitled for the amounts for the works it has executed on behalf of plaintiff and plaintiff has authorised defendant no.2 to make payment to 4th defendant which aspect is admitted in reply made by plaintiff to counter claim of 4th defendant. In effect, counter claim made is against claim of plaintiff. Strictly speaking, the language used in Rule-6 A of Order 8 CPC does not exclude making a counter claim by one of the defendant against the co-defendant nor it anywhere indicate that the counter claim should be made only against the plaintiff.

15. In CRPs No.6301 and 6365 of 2012, the observation made by this Court in the order dated 20-07-2017 at paras 13 & 14 reads as under:

“13.....No doubt, the prayer in the application is to come on record in both the suits as co-plaintiff. The proposed party has no right

to come as co-plaintiffs in the facts of the two suits. They are at best entitled to come on record as co-defendants either to support the contest of the other defendants—government or to say how the plaintiff is not entitled to the suit claim, if any, but for by them. (emphasis supplied)

14. Having regard to the above, the petitioner is required to be impleaded as defendant No.4 respectively in the two suits. It is made clear that in such event, the proposed party impleaded as 4th defendant is entitled to file written statement and adduce evidence, including to cross examine the witnesses to the suit already examined on the dates being fixed by the Court. It is needless to say any filing of written statement to set out their defence to be made is within 15 days from today and any right for cross examination is on filing a memo of who are the witnesses required in both the suits to be cross examined to recall by trial Court and permit such cross examination and re-examination as the case may be. Needless to say, thereafter the petitioner is entitled to adduce their evidence as co-defendant to the suit.”

16. This Court in the above CRPs made an observation that 4th defendant is entitled to say how the plaintiff is not entitled to the suit claim if any, but for by them. The counter claim of 4th defendant is to the effect that the plaintiff is not entitled for entire claim in suit as 4th defendant executed the works and it is entitled for the amount, which in my opinion is claim against plaintiff's claim and within the parameters of Order 8, Rule 6-A CPC. The trial Court erroneously held that counter claim is against direction in earlier CRPs. Admittedly, plaintiff admitted that certain works are executed by 4th defendant and it authorized defendant no.2 to make payment to it and,

therefore, rejecting counter claim made by 4th defendant and driving it to file another suit is nothing but multiplying the litigation and Order 8, Rule 6-A is enacted to avoid such situation.

17. In **Rohit Singh's case** the Supreme Court at para 21 held as follows:-

“21. Normally, a counter claim, though based on a different cause of action than the one put in suit by the plaintiff could be made. But, it appears to us that a counter claim has necessarily to be directed against the plaintiff in the suit, though incidentally or along with it, it may also claim relief against the co-defendants in the suit. But a counter claim directed solely against the co-defendants cannot be maintained.”

18. Maintainability of the counter claim is concerned, unlike in **Rohit Singh's** case where a counter claim was sought to be filed after evidence on both sides was concluded and even arguments had been heard, in those circumstances, it was observed that entertaining counter claim by the High Court reversing the discretion exercised by the trial Court in rejecting the counter claim of the respondents therein was clearly illegal and without jurisdiction. But in the instant case, such a stage is yet to be reached and the 4th defendant is impleaded as a

party respondent and filed his written statement and issues are yet to be framed.

19. In view of above facts and circumstances, the impugned docket dated 29-09-2016 passed by the trial Court is set aside and trial Court is directed to take on file the counter claim made by the 4th defendant/revision petitioner and deal with it in accordance with law. The CRPs 6029 & 6021 of 2016 are allowed accordingly. Miscellaneous petitions, if any, pending in these revision petitions shall stand closed. There shall be no order as to costs.



A.RAJASHEKER REDDY, J

Dated: 04-04-2017
NRG

