

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (227) No. 463 of 2015**

1. Sabhan Bai, W/o Late Shri Shivnarayan, aged about 50 years,
2. Karan Dhuri, S/o Late Shri Shivnarayan, aged about 31 years,
3. Anil Dhuri, S/o Late Shri Shivnarayan, aged about 24 years,
4. Sunil Dhuri, S/o Late Shri Shivnarayan, aged about 20 years,
5. Anita Dhuri, D/o Late Shri Shivnarayan, aged about 21 years,
6. Sarita Dhuri, D/o Late Shri Shivnarayan, aged about 24 years,

All R/o Village- Korami, Police Station- Sirgitti, Tahsil – Bilaspur,  
Civil & Revenue District – Bilaspur (C.G.)

7. Dulaurin Bai, D/o Late Shri Shivnarayan, W/o Shri Jethu, aged about 33 years, R/o Village – Near Mata Chaura Bodri, Police Station- Chakarbhatha, Tahsil- Bilha, Civil & Revenue District – Bilaspur (C.G.)

**---Petitioners/defendants**

**Versus**

1. Baldev Prasad Dhuri, S/o Late Shri Shankar Lal Dhuri, aged about 45 years, R/o Village-Korami, Police Station- Sirgitti, Tahsil – Bilaspur, Civil & Revenue District – Bilaspur (C.G.)  
(Plaintiff)

2. State of Chhatisgarh, Through the District Collector Civil and Revenue District Bilaspur (C.G.)

(Defendant No. 8)

**---- Respondent/Applicant**

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| For Petitioner       | : Mr. P.M. Shrivastava, Advocate.   |
| For Respondent No.1  | : Mr. Dinesh Chand Verma, Advocate. |
| For Respondent No. 2 | : Mr. Aditya Sharma, Panel Lawyer.  |

**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order On Board**

**01/10/2018**

1. Plaintiff, respondent No. 1 herein, filed a suit for declaration of title, permanent injunction and partition on 12.05.2014. After service of summons, defendants No. 1 to 7 filed their written statement and also filed counter claim on 19.08.2014 stating that cause of action has arisen on 12.05.2014. That counter claim was disposed of by the trial Court stating that the said counter claim is not in prescribed format giving liberty to the defendants to file fresh counter claim. After rectifying the defects, the second counter claim was filed on 13.02.2015. This time, the counter claim filed by the defendants has been rejected on the ground that on 03.12.2014, issues have already been framed and the case is fixed for evidence on 18.12.2014 and, as such, the said counter claim is not maintainable, against which this writ petition has been filed questioning the same.

2. Learned counsel for the petitioners/defendants would submit that the trial Court is absolutely justified in rejecting the counter claim as same was filed along with written statement on 19.08.2014 stating the cause of action has arisen on 12.05.2014 and the second counter claim was filed on 13.02.2015 after rectifying the defects; and that has been dismissed on the ground that issues have been framed and the date of evidence has already been fixed, as such, the impugned order is liable to be set aside.

3. Per contra, counsel for the respondent No. 1 would support the impugned order.

4. I have heard learned counsel for the parties and perused the order impugned with utmost circumspection.

5. In order to decide the plea raised at the Bar, it would be profitable to notice the

provision of Order 8 Rule 6-A of the CPC which provides as under:-

“6-A. **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. A careful perusal of Order 8 Rule 6-A(1) of the CPC would show that the parties are entitled to file counter-claim provided that the cause of action must have accrued to the defendant either before the defendant had delivered his defence or before the time extended for delivering his defence has expired.

7. The legal position in this regard is also well settled in a catena of decisions of the Supreme Court. Some of them may be noticed profitably and gainfully herein:-

7.1 In the matter of **Mahendra Kumar and Another Vs. State of Madhya Pradesh and others**<sup>1</sup> the Supreme Court has clearly held that for filing of the counter-claim under Order 8 Rule 6-A(1), the cause of action must have arisen either before the defendant had delivered his defence or before the time limited for delivering his defence has expired by holding as under:-

“.....What is laid down under Rule 6-A(1) is that a counter-claim can be filed, provided the cause of action had accrued to the defendant before the defendant had delivered his defence or before the time limited for delivering his defence has expired,

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1 (1987) 3 SCC 265

whether such counter-claim is in the nature of a claim for damages or not.”

**7.2** In the matter of **Bollepanda P. Poonacha and Another Vs. K.M. Madapa**<sup>2</sup>, it has been held by the Supreme Court that defendant's right to file counter-claim is an additional right and cause of action must accrue either before or after the filing of the suit, but before the defendant has raised his defence and held as under:-

“11. The provision of Order 8 Rule 6-A must be considered having regard to the aforementioned provisions. A right to file counter-claim is an additional right. It may be filed in respect of any right or claim, the cause of action therefore, however, must accrue either before or after the filing of the suit but before the defendant has raised his defence.”

**7.3** It has also been held that a belated counter-claim must be discouraged by the Court. See **Ramesh Chand Ardawatiya Vs. Anil Panjwani**<sup>3</sup>.

**7.4** Recently, in the matter of **Vijay Prakash Jarath Vs. Tej Prakash Jarath**<sup>4</sup>, the Supreme Court has categorically restated the law by holding that as per Rule 6A (1) of Order 8, the cause of action in respect of which a counter claim can be filed, should accrue before defendant has delivered his defence and relied upon earlier judgement of the Supreme Court in **Bollepanda P. Poonacha** (supra).

**7.5** In the matter of **Vijay Prakash Jarath** (Supra), the Supreme Court has summarized the principle with regard to maintainability of counter claim and held that cause of action in respect of which counter claim can be filed, should accrue before defendant has delivered his defence, namely, before defendant has filed his written statement. Relevant paragraphs of the report state as

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2 (2008) 13 SCC 179

3 (2003) 7 SCC 350

4 (2016) 11 SCC 800

under:-

“9. A perusal of sub-rule (1) of Rule 6-A of Order 8, leaves no room for any doubt, that the cause of action in respect of which a counterclaim 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 (supra)**, wherein this Court observed as under:

“11. The provision of Order 8 Rule 6-A must be considered having regard to the aforementioned provisions. A right to file counter claim 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 v. Lalith Kumar Chopra**<sup>5</sup> is based on the decision of this Court in **Baldev Singh v. Manohar Singh**<sup>6</sup>.

It is not a matter of dispute in the present case, that cause of action for which

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5 2007 SCC OnLine Kar 159

6 (2006) 6 SCC 498

the counterclaim was filed in the present case, arose before the respondent-plaintiff filed the suit (out of which these petitions/appeals have arisen). It is, therefore, apparent that the appellants before this Court were well within their right to file the counterclaim”

(emphasis supplied)

**7.6.** It was further held as under :-

“It is quite apparent from the factual position noticed hereinabove, that after the issues were framed on 18-10-1993, the counterclaim was filed by the appellants before this Court (i.e. Defendants 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 the filing of counterclaim, we are satisfied, that there was no justification whatsoever for the High Court to have declined, the appellant before this Court, from filing his counterclaim on 17-6-1996, specially because, it is not a matter of dispute that the cause of action, on the basis of which the counterclaim was filed by Defendants 3 of 4, accrued before their written statement was filed on 11-11-1992. In the present case, the respondent-plaintiff's was still being recorded by the trial Court, when the counterclaim 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 counterclaim 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 para 15 of Bollepanda P. Poonacha case (supra), would be suffered by the respondent-plaintiff in this case.”

**8.** Applying the principle of law laid down by the Supreme Court in the afore-cited case (supra), in the facts of present case, it is quite vivid that cause of action has

arisen for filing the instant counter claim on 12.05.2014 before filing the written statement . That counter claim along with written statement was disposed of by the trial Court stating the same is not in prescribed formate and the liberty was granted to the defendants for filing fresh counter claim after rectifying the defects, which they filed on 13.02.2015 which, in the opinion of this Court, could not have been rejected by the trial Court only on the ground that issues have been framed and the case is fixed for evidence. In fact, no prejudice or irreparable loss as expressed in **Bollepanda P. Poonacha case** (supra) restricted in **Vijay Prakash Jarath** (Supra), would be suffered by the respondent No. 1/plaintiff. Judgment of the Supreme Court (**Gayathri Women's Welfare Association Vs. Gowramma & others**<sup>7</sup>) relied upon by the trial Court to decline the counterclaim is clearly inapplicable to the facts of the present case, as in that case counterclaim was sought to be introduced at the stage of appeal before the High Court.

9. In view of above, the impugned order is set aside. Counter claim is held to be maintainable and the same is directed to be taken on record. Needless to mention, that it shall be open to the respondent/plaintiff to raise all pleas open to him through the written statement which is to be filed by him. The trial Court is also directed to expedite the trial of the suit.

10. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge

D/-

