

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.110 of 2018

1. M/s Pyarelal & Sons, Wholesale Grain Merchant, Vyapar Vihar Road, Bilaspur (CG) Through Proprietor Ashok Kumar Arora
2. Shri Ashok Kumar Arora S/o Late Pyarelal Arora, Aged about-61 years, Proprietor-Pyarelal & Sons, Wholesale Grain Merchant, Vyapar Vihar Road Bilaspur, R/o Dayalband, Bilaspur (CG) Mo. No.9425535363

---- Petitioners

Versus

1. Municipal Corporation Through Commissioner, Office Municipal Corporation, Bilaspur (CG)
2. Estate Officer, Municipal Corporation Office, Vikas Bhawan, Nehru Chowk, Bilaspur (CG)
3. Neelam Arora W/o Late Rajesh Arora, Aged about-50, R/o Saraswati Enterprises, Dayalband, Bilaspur (CG)
4. Ayush Arora, S/o Rajesh Arora, Aged about-19, R/o Saraswati Enterprises, Dalayband, Bilaspur (CG)
5. Shashi Arora, W/o Anil Arora, Aged about-47, R/o Arora Steels, Dayalband, Bilaspur (CG)

---- Respondents

For Petitioners	:	Mr.K.A.Ansari, Senior Advocate with Mr.Devesh G. Kela, Advocate
For Respondent No.1 & 2	:	Mr.H.B.Agrawal, Senior Advocate with Mr.Yogesh Chandra, Advocate
	:	

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/10/2018

- 1) By the impugned order, application filed by the plaintiffs
under Order 7 Rule 11 of the CPC for rejecting the

counter-claim filed by respondents No.3 to 5/defendants has been rejected, against which, this writ petition has been filed.

- 2) I have heard learned counsel for the parties and perused the impugned order.
- 3) Defendants No.3 to 5 filed written statement on 9.3.2018 and thereafter counter-claim was filed on 19.4.2018 stating that cause of action has arisen on 20.12.2016 for filing counter-claim.
- 4) It is well settled that counter-claim can be filed along with written statement or after written statement, but cause of action must have arisen before filing of written statement.
- 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**¹ 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, 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**², 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

¹ (1987) 3 SCC 265

² (2008) 13 SCC 179

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 Panjwani³.

7.4 Recently, in the matter of Vijay Prakash Jarath (supra), 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).

- 8) Thus, the legal position flowing from the aforesaid binding judgements of the Supreme Court is quite vivid that the defendant has an additional right to file his counter-claim in respect of cause of action for filing counter-claim must have arisen either before the

³ (2003) 7 SCC 350

written statement is filed in the suit or within the extended time granted by the trial Court to file written statement.

- 9) In the instant case, admittedly, counter-claim was filed on 19.4.2018 showing that cause of action has arisen on 20.12.2016, as such, the trial Court is absolutely justified in rejecting the application filed by the plaintiffs under Order 7 Rule 11 of the CPC.
- 10) So far as counter-claim is barred by law is concerned, the trial Court has already been held that issue will be framed in this regard and will be taken care of.
- 11) I do not find any illegality in the impugned order. Accordingly, the civil revision being without substance is liable to be and is hereby dismissed. No cost(s).

Sd/-
(Sanjay K Agrawal)
Judge

B/-