

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.4863 of 2018

ORDER:

Plaintiff, in O.S.No.136 of 2016 on the file of the learned VIII Additional District & Sessions Judge, East Godavari at Rajamahendravaram, is the petitioner in the present revision, filed under Article 227 of the Constitution of India.

Heard Sri Srinivasa Rao Pappu, learned counsel for the petitioner, and Sri Srinivas Basava, learned counsel for the respondents, apart from perusing the entire material available on record.

Petitioner herein instituted the above said suit for declaration of title and injunction in respect of the suit schedule property. In the said suit, the defendants-respondents herein filed written statement and also did set up a counter-claim and sought for injunction against the plaintiff. Thereafter, plaintiff-petitioner herein filed I.A.No.42 of 2017, under the provisions of Order VIII Rule 6-C r/w Section 151 CPC, praying the Court below to decide about the counter-claim made by the respondents herein. The said application was contested by the respondents by way of filing counter. The learned Additional District Judge, by way of an order, dated 03.07.2018, dismissed the said application. The said order is under challenge in the present revision.

According to the learned counsel for the petitioner, the order impugned is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order VIII Rule 6-C CPC. It is further submitted that, had really the contents of the affidavit, filed in support of the application, been considered in a proper perspective, the order impugned in the present revision would not have emanated. It is also the submission of the learned counsel that, having regard to the lack of pecuniary jurisdiction to the Court below, the learned Judge ought to have allowed the application. It is also the submission of the learned counsel that the petitioner herein filed I.A.No.1129 of 2016 in the suit for temporary injunction and the learned Additional District Judge was pleased to grant temporary injunction. In support of his submissions and contentions, learned counsel for the petitioner placed reliance on the following judgments:

1. 2015 (2) SCC 682 and
2. 2011 SCC Online Cal 3991

Per contra, it is contended by the learned counsel for the respondents that there is absolutely no error nor there exists any infirmity in the impugned order and, in the absence of the same, the questioned order is not amenable for any judicial review, under Article 227 of the Constitution of India.

In the above background, now the issues that emerge for consideration by this Court are:

1. *Whether the objections raised by the petitioner herein, by way of filing I.A.No.42 of 2017 on entertainability of the counter-claim filed by the respondents herein, are sustainable and tenable? and*
2. *Whether the petitioner herein is entitled for any relief, under Article 227 of the Constitution of India, in the present Civil Revision Petition?.*

There is absolutely no dispute with regard to the fact that, respondents herein did set up the counter-claim for Rs.3,10,000/- before the Court below, under the provisions of Order VIII Rule 6 CPC. It is the case of the petitioner herein that the learned Additional District Judge has no jurisdiction to entertain the counter-claim for want of pecuniary jurisdiction.

In order to appreciate the contentions of the learned counsel for the petitioner, it would be appropriate to refer to the provisions of Order VIII Rule 6-A to C CPC which read 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.

6B. Counter-claim to be stated

Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

6C. Exclusion of counter-claim

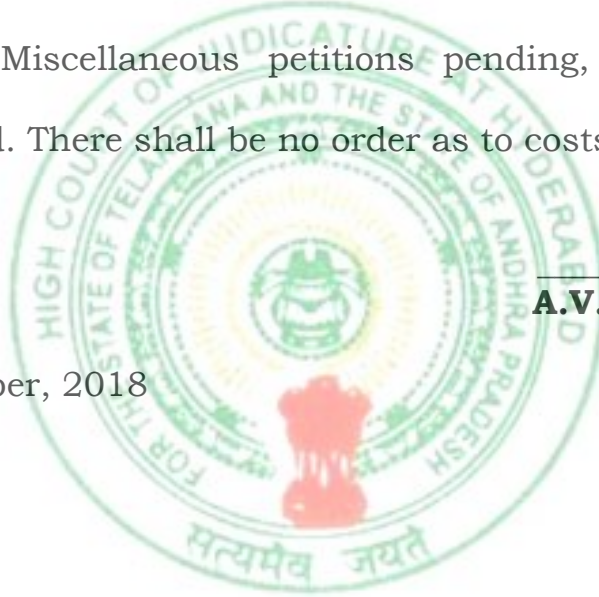
Where a defendant sets up a counterclaims and the plaintiff contends the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counterclaim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit”.

In the present case, petitioner herein filed I.A.No.42 of 2017, as stated supra, under the provisions of Order VIII Rule 6-C CPC which enables the plaintiff to apply to the Court for exclusion of the counter-claim. The case of the petitioner herein is that the District Court has pecuniary jurisdiction over and above Rs.15,00,000/- only and, as the respondents herein filed counter-claim only at Rs.3,10,000/-, such counter-claim cannot be entertained. It is very much evident from a reading of Rule 6-A of Order VIII CPC that there is a restriction on the upper limit so far as pecuniary jurisdiction is concerned. As rightly observed by the learned Additional District Judge, there is no provision of law which prohibits setting up of counter-claim in a suit below the plaint value. It is the settled and well established principle of law that, unless the order impugned suffers from jurisdictional error and

perversity, jurisdiction of this Court, under Article 227 of the Constitution of India, cannot be permitted to be invoked. The judgments sought to be relied upon by the learned counsel for the petitioner have absolutely no reliance to the facts of the present case and the points involved. Therefore, the same would not render any assistance to the petitioner herein. Therefore, this Court finds no scintilla of hesitation to hold that there are no merits in the present revision.

For the aforesaid reasons, the Civil Revision Petition is dismissed. Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

15th December, 2018
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A.V.SESHA SAI, J