

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6964 of 2018

Date of Decision: 01.11.2018

Somany Ceramic Ltd.

.....Petitioner

Vs.

Rahul Kaushik

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. J.M. Kalia, Advocate,
for the petitioner.

Mr. Amit Jain, Advocate as Amicus Curiae

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order of the learned trial Court dated 27.08.2018 (Annexure P-7), by which the petitioners' application seeking that issue no. 4 be struck off, has been dismissed. (The issues framed have been reproduced in Annexure P-5 with the petition).

Issue no. 4 reads as follows:-

“Whether the defendant/counter claimant is entitled to a decree for recovery as prayed for? OPD/OCC.”

The contention is that in fact the counter-claim made by the respondent-defendant in his written statement, cannot be entertained at all, the contents thereof not having been verified and consequently, the defendant cannot be even referred to as a counter-claimant, as has been done in issue no. 4. In other words, the counter claim is sought to be rejected *ab initio*.

In the written statement filed by the respondent-defendant (copy

Annexure P-3) there are seen to be 09 preliminary objections taken, with the reply on merits containing 05 paragraphs, immediately after which the counter-claim is contained in one detailed paragraph.

The verification that follows thereafter, reads as follows:-

“That on 16th day of September 2017 at Bahadurgarh that the contents of para nos. 1 to 8 of the preliminary objection and para nos. 1 to 5 of on merits are true and correct to the best of my knowledge and belief and last para is prayer clause.

*Rahul Kaushil S/o Late Sh. Kishan
Chandra Sharma, R/o Flat no. 16, 2nd
Floor, R.S. Complex, Opp. Birla
Mandir, Mathura, U.P.”*

Thus, the contention of learned counsel for the petitioner is that the verification being only in respect of paragraphs no. 1 to 8 of the preliminary objections and paragraph nos.1 to 5 of the reply on merits, there being no verification of what is contained in the counter-claim immediately following the last paragraph of the written statement, the counter-claim cannot be even taken into consideration.

He relies upon various judgments of the Supreme Court, one of which he specifically points to, in the case of **R.P. Moidutty** vs. **P.T.Kunju Mohammed and another** AIR 2000 SC 388, the relevant part of which (as contended in paragraph 35 thereof, reads as follows:-

“In our opinion, unless the defect in verification was rectified, the petition could not have been tried. For want of affidavit in required form and also for lack of particulars, the allegations of corrupt practice could not have been enquired into and tried at all. In fact, the present one is a fit case where the petition should have been rejected at the threshold for non-compliance with the mandatory provisions of law as to pleadings.”

Though initially learned counsel for the petitioner had submitted that

the counter-claim in fact has to be treated to be a plaint and the pleadings therefore, need to be the same as are necessary for filing a plaint, Mr. Amit Jain, learned Amicus Curiae, who had been requested to assist the Court on the last date of hearing (as I was not at all convinced that notice should be issued to the respondent), points to Order VIII Rule 6-B of the Code of Civil Procedure, which reads as follows:-

“6-B 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.”

He therefore submits that the counter-claim is to be only contained in the written statement and not by way of any separate pleading.

Therefore, any verification of the counter claim naturally has to be also contained in the verification of the contents thereof, at the end of the written statement.

Learned counsel for the petitioner however counters by pointing to the 4th proviso to Rule 6-A of Order VIII, which reads as follows:-

“The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.”

He thus submits that the counter-claim has to be treated as a plaint and therefore verified in the same manner.

Having considered the contention of learned counsel for the petitioner as also learned Amicus Curiae, in my opinion, learned counsel for the petitioner is absolutely correct to the extent that the counter-claim cannot be taken into consideration unless the contents thereof are verified; however, the contention that the counter-claim should be a separate pleading, in the same manner as is a plaint,

is not a contention which can be accepted, in view of what is specifically stipulated in Rule 6-B of Order VIII to the effect that the counter-claim shall be contained in the written statement itself.

Consequently, this petition is disposed of with a direction that unless the respondent herein (defendant-counter claimant before the learned trial Court) amends the verification to the written statement, to include therein knowledge of the contents of paragraph 9 of the preliminary objections as also the contents of the counter claim, which verification should be as stipulated in Order 6 Rule 15 of the CPC, the counter claim shall be rejected by the trial Court.

Appropriate time shall, however, be granted by the trial Court to allow the respondent to do the needful with a copy of this order to be sent to the trial Court by the Registry of this Court.

No notice having been issued in this petition, it would also be the responsibility of the petitioner, i.e. the plaintiff in the suit, to inform the trial Court as also the respondent through its counsel, of this order (of this Court).

Learned counsel for the petitioner has now also submitted that the direction given by this Court in this order would amount to an amendment in the written statement/counter-claim itself, and therefore, the petitioner-plaintiff may now be permitted to file a replication to the written statement-cum-counter-claim filed by the respondent-defendant.

However, in the impugned order, it is specifically observed by the learned trial Court as follows:-

“Today the case was fixed for cross-examination of DW1 Rahul Kaushik. At this stage, an application under Order 14 Rule 5 read with Section 151 CPC for striking out issue no. 4 and expunging the statement in order dated 16.02.2018 is filed by learned plaintiff counsel. Notice of this

application given to defendant counsel. He opted to argue orally. Oral arguments of learned counsels' heard. Record perused. It is observed by the Court that vide order dated 16.02.2018, the then learned court framed issues as per the pleadings of the parties and it was also mentioned in order and same is hereby reproduced:-

“Learned plaintiff counsel stated at bar that he did not want to file any reply to counter-claim/replication”. Accordingly, the application at hand for striking out issue no. 4 and expunging the statement as mentioned in zimini order dated 16.02.2018 is not maintainable because firstly issues were framed as per the pleadings of the plaintiff taken in plaint and is taken in written statement/counter claim by defendant and secondly, presumption of truth is attached to order dated 16.02.2018 to the extent that plaintiff counsel stated at bar that he does not want to file reply to counter-claim. Accordingly, application at hand stands dismissed.”

Thus, that Court had actually dismissed the application under Order 14 Rule 5 CPC filed by the petitioner, on the ground that on 16.02.2018, when issues were framed by the Court, counsel for the plaintiff had stated at the bar that he did not wish to file any reply to the counter-claim/replication.

Nothing has been brought to the notice of this Court that the said statement was qualified with the reasoning that it was due to the fact that the verification contained in the written statement was not proper.

That being so, I see no reason at all to allow the prayer now made by learned counsel for the petitioner, at a stage when the defendants' evidence is being led, that upon the verification to the written statement being amended, he be

allowed to file a replication to the written statement as also the counter-claim, with no part of either the written statement or the counter-claim having been allowed by this Court to be amended and the only direction given hereinabove being that the counter-claim would be struck off if the verification is not corrected to admit knowledge of the contents of all paragraphs of the written statement/counter claim.

The petition is disposed of as above.

November 01, 2018
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes