

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.632 of 2019

1. Ritesh Gharde, S/o Narad Singh Gharde, Aged about 31 years,
(Defendant No.2)
2. Narad Singh Gharde, S/o Late Ravishankar Gharde, Aged about 65 years,
(Defendant No.3)

Both are R/o Ward No.4, Naya Dhaba, Rajnandgaon, District Rajnandgaon (C.G.)

---- Petitioners

Versus

1. Smt. Jamuna Chaure, W/o Shri M.L. Chaure, Aged about 65 years,
R/o Naya Dhaba Road, Shivnagar, Rajnandgaon, Tahsil & District Rajnandgaon (C.G.)
(Plaintiff)
2. Laxmikant Sahu, S/o Roopram Sahu, R/o Ward No. 4, New Dhaba,
Rajnandgaon District Rajnandgaon (C.G.)
(Defendant No.1)
3. Smt. Ganga Bai, W/o Late Kalaram Dongre, R/o Ward No.4, Naya Dhaba, Rajnandgaon, District Rajnandgaon (C.G.)
(Defendant No.4)
4. Nilkanth Gharde, S/o Late Ravishankar Gharde, R/o Water Power,
House Ward No.3, Khairagarh, District Rajnandgaon (C.G.)
(Defendant No.5)
5. Prashant Ramteke, S/o Gautam Ramteke,
(Defendant No.6)
6. Nitesh Ramteke, S/o Gautam Ramteke,
(Defendant No.7)

Respondent No.5 & 6 are R/o Gandhi Chowk Ward No.20, Dalli Rajjhara, Tahsil Daudi Lohara, District Balod (C.G.)

7. Manish Kumar Sahu, S/o Ashok Kumar Sahu, R/o Naya Dhaba, Tahsil & District Rajnandgaon (C.G.)
(Defendant No.8)
8. Rajesh Kumar Sahu, S/o Deendayal Sahu, R/o Karamtra, Tahsil Khairagarh, District Rajnandgaon (C.G.)
(Defendant No.9)
9. Hemant Kumar Sahu, Occupation Document Writer, Tahsil Office of Rajnandgaon (C.G.)
(Defendant No.10)

10. Deputy Registrar, Office of Registry, Tahsil & District Rajnandgaon
(C.G.)

(Defendant No.11)

11. State of Chhattisgarh, Through the Collector, District Rajnandgaon
(C.G.)

(Defendant No.12)

12. Inspector General of Registration & Superintendent Stamp, Motibagh
Chowk, Raipur (C.G.)

(Defendant No.13)

---- Respondents

For Petitioners: Mr. Anoop Majumdar and Mr. Gyan Prakash Shukla,
Advocates.

For Respondents No.10, 11 and 12 / State: -
Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate, on
advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/08/2019

1. By the impugned order, the petitioners / defendants No.2 & 3 application under Order 6 Rule 17 of the CPC for inserting / raising counter-claim in the written statement has been dismissed.
2. Learned counsel for the petitioners / defendants No.2 & 3 submits that the trial Court is absolutely unjustified in rejecting the application, as it ought to have permitted the filing of counter-claim, as admittedly, the cause of action was sought to be introduced by way of amendment after filing of written statement which is permissible under Order 8 Rule 6A of the CPC. He placed reliance upon the decision of the Supreme Court in the matter of **Mahendra Kumar and another v. State of Madhya Pradesh and others**¹ to buttress his submission.
3. I have heard learned counsel for the petitioners and perused the impugned order with utmost circumspection.
4. Order 8 Rule 6A of the CPC provides as under: -

¹ (1987) 3 SCC 265

“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.”

5. A careful perusal of the aforesaid provision would show that counter-claim under this provision can be filed before the defendant has delivered his defence or before the time limited for delivering his defence has expired.
6. The Supreme Court in Mahendra Kumar (supra) has also held that even if the cause of action has arisen prior to the filing of the written statement, the counter-claim can be filed after the filing of the written statement and observed as under: -

“15. The next point that remains to be considered is whether Rule 6-A(1) of Order VIII of the Code of Civil Procedure bars the filing of a counter-claim after the filing of a written statement. This point need not detain us long, for Rule 6-A(1) does not, on the face of it, bar the filing of a counter-claim by the defendant after he had filed the written statement. 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. The High Court, in our opinion, has misread and misunderstood the provision of Rule 6-A(1) in holding that as the appellants had filed the counter-claim after the filing of the

written statement, the counter-claim was not maintainable. The finding of the High Court does not get any support from Rule 6-A(1) of the Code of Civil Procedure. As the cause of action for the counter-claim had arisen before the filing of the written statement, the counter-claim was, therefore, quite maintainable. Under Article 113 of the Limitation Act, 1963, the period of limitation of three years from the date the right to sue accrues, has been provided for any suit for which no period of limitation is provided elsewhere in the Schedule. It is not disputed that a counter-claim, which is treated as a suit under Section 3(2)(b) of the Limitation Act has been filed by the appellants within three years from the date of accrual to them of the right to sue. The learned District Judge and the High Court were wrong in dismissing the counter-claim.”

7. Similar proposition has been laid down by the Supreme Court in the matters of Bollepanda P. Poonacha and another v. K.M. Madapa² and Vijay Prakash Jarath v. Tej Prakash Jarath³.
8. In view of the authoritative pronouncement of the Supreme Court in Mahendra Kumar (supra), in the instant case, written statement was admittedly, filed on 10-3-2017 and counter-claim by way of amendment was sought to be filed on 14-2-2019 in which the cause of action was shown to have arisen in July, 2018 which is apparently after the date of filing the written statement, as such, the counter-claim under Order 8 Rule 6-A of the CPC is not maintainable and rightly held so by the trial Court. I do not find any merit in this writ petition and it is accordingly dismissed. However, this will not prevent defendants No.2 & 3 to file a separate suit, if any, of the subject matter which was the subject matter of counter-claim. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

² (2008) 13 SCC 179

³ (2016) 11 SCC 800