

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 494 OF 2019

Mrs. Siya Ketan Prabhu Verlekar,
34 years old, Indian National,
Residing at House No.324, Kosambi,
Street, Comba, Margao,
Goa, 403601.

... Petitioner

V e r s u s

Mr. Ketan Vinay Prabhu Verlekar,
33 years old, Indian National, residing
at House No.51A/5, Shrikipa Altinho,
Near HDFC Alto Branch, Mapusa,
Goa 403507, presently residing at
G-11 Mana Prestine Dodda Kannelli,
Bangalore, Karnataka 5560 035

... Respondent

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. V. Korgaonkar, Advocate for the Petitioner.

Mr. D. J. Pangam and Mr. P. Sawant, Advocates for the Respondent.

Coram :- C. V. BHADANG, J.
Date : 18th June 2019

ORAL ORDER

By this petition, the petitioner is challenging the order dated 08.05.2019, below exhibit 35, passed by the Trial Court by which, the Trial Court has allowed the application for amendment of the counter claim filed by the respondent.

2. The brief facts necessary for the disposal of the petition may be stated thus :

That the petitioner has filed Marriage Petition No.50/2017/III against the respondent for divorce under Article 4(4) of the Decree Law dated 26.05.1911 and for permanent maintenance. It appears that the respondent filed his written statement cum counter claim on 06.06.2017 and incidentally by virtue of the counter claim, the respondent is also seeking a Decree of Divorce under Article 4(4) of the Decree Law on the ground of cruelty.

3. On 17.03.2018, the petitioner filed an application for amendment of the petition for restraining the respondent from disposing off their joint properties which application was allowed. The respondent filed an additional written statement cum counter claim to the amended pleadings (as incorporated by the petitioner) on 06.07.2018 vide WS – exhibit 29. The petitioner filed an application for exclusion of the said additional counter claim under Order VIII Rule 6(C) of the Code of Civil Procedure (CPC, for short). The learned Trial Court by an order dated 16.10.2018, disposed off the said application by directing the respondent to incorporate the contents of the additional counter claim in the original counter claim by way of an amendment. The petitioner feeling aggrieved by the said order dated 16.10.2018, filed Writ Petition No.409/2019 which was disposed off on 26.04.2019

taking note of the fact that in pursuance of the impugned order, the respondent had already filed an application (exhibit 35), for amendment of the original counter claim. This Court directed the said application to be decided on its own merits. Now by the impugned order dated 08.05.2019, the said application, (exhibit 35), has been allowed.

4. I have heard Mr. J. E. Coelho Pereira, the learned Senior Counsel appearing for the petitioner and Mr. D. Pangam, the learned Counsel appearing for the respondent. Perused record.

5. Mr. J. E. Coelho Pereira, the learned Senior Counsel for the petitioner has submitted that on the respondent's own saying, the cause of action for seeking the amendment of the counter claim has arisen after the filing of the original written statement/counter claim. It is submitted that thus the cause of action having arisen subsequent to the delivery of the defence, the amended counter claim was not permissible or competent under Order VIII Rule 6 of the CPC. Reliance in this regard is placed on the decision of the Supreme Court in the case of **Mahendra Kumar & anr vs State Of Madhya Pradesh & Ors (1987) 3 SCC 265** and the decision of this Court in the case of **Mrs. Oujilvie Fernandes vs. Mr.**

Joaquim Maria Salvador Coutinho de Figueiredo 2017

(1) Bom.C.R. 824, in order to submit that the counter claim can only be filed in respect of a cause of action which has arisen prior to the delivery of the defence or the expiry of the time to deliver the defence. It is submitted that the learned trial Court was in error in placing reliance on the decision of the Kerala High Court in the case of **Indira Bhai vs. Madhusoodanan (OP (C) No.496 of 2011(0))**, decided on 27.10.2014, when the issue was clearly covered by a decision of this Court and that of the Supreme Court. It is submitted that the amendment was clearly by way of a counter blast to the amendment sought by the petitioner which was allowed on 17.03.2018 and the amendment sought by the respondent was not bonafide.

6. Mr. Pangam, the learned Counsel for the respondent, has supported the impugned order. It is submitted that the decision of this Court in the case of **Oujilvie Fernandes** (supra), has rightly been distinguished on facts by the learned Trial Court. It is submitted that in the present case, the amendment has been necessitated on account of the subsequent development by which the petitioner was permitted to amend the petition by order dated 17.03.2018. The respondent had already filed an additional

written statement/counter claim-exhibit 29, on 06.07.2018. However, on account of a technical objection raised on behalf of the petitioner, seeking exclusion of the said counter claim, the learned trial Court instead permitted the petitioner to file an application for amendment of the original counter claim which has now been allowed by the impugned order. It is submitted that the facts in the present case are similar to the one before the Kerala High Court in the case of **Indira Bhai vs. Madhusoodanan** (supra). Further reliance is placed on the decision of the Allahabad High Court in the case of **Avaneesh Kumar & Ors. vs. Ravi Datt & anr. (Civil Misc. Writ Petition No.57449/2008)** decided on 07.11.2008, in order to submit that in similar fact situation, the amendment was permitted.

7. I have carefully considered the rival circumstances and the submissions made. The material facts are not in dispute and are matter of record. The petition filed by the petitioner is for divorce and for permanent maintenance in which the respondent has filed a written statement and raised a counter claim for divorce vide written statement-exhibit 11, which was filed on 06.06.2017. Subsequent to this, the petitioner sought amendment of the petition which was allowed on 17.03.2018 thereby permitting the petitioner to

incorporate a prayer for injunction restraining the respondent from alienating or dealing with the joint properties of the couple. Obviously, the respondent was entitled to carry out consequential amendment to his written statement which he did on 06.07.2018 vide an additional written statement-exhibit 29, in which he sought to raise an additional counter claim by way of a similar order restraining the petitioner, inter alia, from alienating, transferring or encumbering the landed properties, Bank fixed deposit, diamond and gold jewellery, etc., belonging to the couple. The petitioner sought exclusion of the said counter claim in which the trial Court granted liberty to the respondent to file application seeking amendment of the counter claim as originally filed vide Exh.11. The respondent accordingly filed an application (Exhibit 35). By virtue of the said application (exhibit 35), the respondent sought incorporation of paragraphs 118(A) to 118(F) and additional prayer clauses (D) and (E). It is true that in para 3 of the application, the respondent claimed that the cause of action for said amendment has "come to fruition" subsequently, i.e. after the filing of the written statement cum counter claim which would obviously mean that the original written statement/counter claim. This is because the additional written statement cum counter claim was sought to be filed in pursuance of the amendment of the petition carried

out by the petitioner on 17.03.2018. It can thus clearly be seen that the cause of action for the amended counter claim although has arisen after the filing of the original written statement/counter claim, the said amendment was necessitated on account of the amendment carried out to the petition by the petitioner. Thus, the cause of action for amending the written statement and/or incorporating the additional counter claim has arisen prior to the delivery of defence to the amended petition and precisely this is the circumstance which distinguishes the present case from the one in the case of **Oujilvie Fernandes** (supra).

8. This was precisely the question before the Kerala High Court in the case of **Indira Bhai** (supra), as to whether the defendant in a suit can raise a counter claim with respect to a cause of action which arose consequent to the amendment of the plaint after filing written statement by the defendant. This was also the issue before the Allahabad High Court in the case of **Avneesh Kumar** (supra). The legal position that the counter claim has to relate to the cause of action prior to the filing of the written statement or prior to the expiry of the time to deliver the defence, is too well settled to be restated. However, the question in the present case is as regards the amendment of the written statement cum counter

claim in pursuance of the amendment carried out to the petition and if the cause of action for amendment of the written statement cum counter claim has arisen prior to such delivery of the defence in relation to the amended petition, it is difficult to see as to how the requirement of Order VIII Rule 6A of the CPC can be said to be violated.

9. Thus, the contention as raised on behalf of the petitioner, to my mind, cannot be accepted. I have gone through the impugned order and it does not suffer from any infirmity so as to require interference.

10. The petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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