

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.7063 of 2017

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.08-11-2017 in I.A.No.784 of 2017 in O.S.No.52 of 2011 of the XXVII Additional Chief Judge, City Civil Court, Secunderabad.

2. The respondent herein filed the said suit against petitioners on 01-10-2010 for recovery of a sum of Rs.17,90,000/- with interest.
3. Written statement-cum-counter-claim was filed thereto by petitioners claiming a sum of Rs.68,60,296/- with interest from respondents.
4. The suit had been initially filed before the I Additional Chief Judge, City Civil Court, Secunderabad.
5. On 22-01-2014, the matter was adjourned by the said Court to 26-03-2014 for hearing on issues.
6. On 26-03-2014, the respondent/plaintiff sought time to file rejoinder against the counter-claim raised by petitioners. So, the matter was adjourned to 24-04-2014, 02-07-2014, 01-08-2014, 21-10-2014, 21-11-2014 and 30-01-2015.
7. The suit was transferred to the Court of XXVII Additional Chief Judge, City Civil Court, Secunderabad.

8. After transfer of the suit, the Court of XXVII Additional Chief Judge, City Civil Court, Secunderabad listed the matter on 23-07-2015. Notice was then issued to both parties and issues were framed on 20-06-2016.

9. Thereafter the matter was posted for trial and when it was coming up for trial, respondent filed I.A.No.1070 of 2016 on 28-09-2016 invoking Order VIII Rule 6-C C.P.C., to exclude of counter-claim.

10. At that time, I.A.No.868 of 2015 filed under Rule 32 of Civil Rules of Practice filed by petitioners was also pending.

11. On 02-12-2016, the Court below recorded that petitioners filed written statement along with counter-claim, but no rejoinder was filed; since counsel for respondent sought time to file rejoinder, such rejoinder should be filed by the next date of adjournment and if not, it would be treated as if there was no rejoinder and issues would be framed on the counter-claim. The matter was directed to be called on 19-12-2016.

12. Subsequently, on 18-01-2017, I.A.No.868 of 2015 was allowed.

13. Thereafter matter was adjourned to 03-02-2017, on which date, a counter was filed by petitioners to I.A.No.1070 of 2016.

14. On 03-02-2017, the Court below recorded that counter was filed to I.A.No.1070 of 2016 and since rejoinder was not filed by respondent to counter-claim, in order to decide I.A.No.1070 of 2016,

the defence of respondent is necessary and directed the respondent to file rejoinder by 21-02-2017. However, rejoinder was not filed before that date and then case got adjourned to 06-03-2017, 15-03-2017, 30-03-2017, 07-06-2017 and 22-06-2017.

15. On 22-06-2017, instead of filing rejoinder, respondent filed I.A.No.784 of 2017 invoking Section 148 C.P.C. to extend time to file rejoinder by modifying the order dt.03-02-2017 until a decision was rendered in I.A.No.1070 of 2016.

16. On 08-11-2017, the said application was allowed holding that till I.A.No.1070 of 2016 filed by respondent to exclude counter-claim is decided, petitioner need not file rejoinder and he can file it thereafter.

17. Assailing the same, this Revision is filed.

18. Learned counsel for petitioners contended that under Order VIII Rule 6-G C.P.C., rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim; under Order VIII Rule 1 C.P.C., a defendant has to file a written statement within 30 days of service of summons on him which can be extended to a maximum of 90 days at the discretion of the Court; and the Court below therefore could not have granted an unlimited time to the respondent to file rejoinder to the counter-claim though written statement-cum-counter-claim was admittedly filed on 20-11-2011. Reliance is placed by petitioners on the judgment in **Salem Advocate**

Bar Association, Tamil Nadu Vs. Union of India¹, Y. Venkata Ramana and Others Vs.Yellaboyani Venkatamma², Koleti Sathaiah Vs. Koleti Mahesh Mahender and others³ and also Nahar Enterprises Industrial Limited and others Vs. Hong Kong and Shanghai Banking Corporation and Ors⁴.

19. Learned counsel for respondent relied upon **Mahanth Ram Das Vs. Ganga Das⁵, Kailash Vs. Nanhku and others⁶ and Kishwari Begum Vs. Quadiri Begum⁷**, and contended that under Section 148 C.P.C. r/w 151 C.P.C., the Civil Court has inherent power to extend the time to file rejoinder to the counter-claim, and since the Court below felt that it was necessary to extend the time, so that I.A.No.1070 of 2016 can be decided, there is no error committed by the Court below in passing the impugned order.

20. In view of the rival contentions, the question which arises for consideration is:

“Whether, in the facts and circumstances of the case, the Court below can grant time to the respondent to file rejoinder to the counter-claim till I.A.No.1070 of 2016 filed by him under Order VIII Rule 6-C C.P.C. is decided or not?”

21. From the facts narrated above, it is clear that respondent had filed the suit before the I Additional Chief Judge, City Civil Court,

¹ (2005) 6 SCC 344

² 2018(3) ALD 561

³ Order dt.27-06-2019 in C.R.P.No.300 of 2019

⁴ (2009) 8 SCC 646

⁵ AIR 1961 SC 882

⁶ (2005) 4 SCC 480

⁷ APLJ 1977 (1) 60

Secunderabad on 01-10-2010 and counter-claim had been filed along with a written statement by petitioners on 20-11-2011.

22. Later the suit was transferred to the XXVII Additional Chief Judge, City Civil Court, Secunderabad on 23-07-2015 and thereafter the respondent filed I.A.No.1070 of 2016 on 28-09-2016 to exclude the counter-claim of the petitioners invoking Order VIII Rule 6-C C.P.C.

23. On 03-02-2017, the Court below granted time till 21-02-2017 to the respondent to file rejoinder to the counter-claim, but no rejoinder to the counter-claim has been filed till date. The respondent had filed I.A.No.784 of 2017 invoking Section 148 C.P.C. to extend time to file rejoinder by modifying the order dt.03-02-2017 till I.A.No.1070 of 2016 is disposed of.

24. Counter-claims are dealt with by order VIII Rule 6-A C.P.C. to Order VIII Rule 6-G C.P.C. While Order VIII Rule 6-A C.P.C. permits the defendant in a suit to file a counter-claim in addition to a pleading of set off, Order VIII Rule 6-C permits a plaintiff to apply to the exclusion of counter-claim. Order VIII Rule 6-G states that rules relating to written statement by a defendant shall apply to written statement/rejoinder to be filed by a plaintiff in answer to the counter-claim.

25. Therefore rejoinder to the counter-claim should be filed by respondent/plaintiff within the time prescribed in Order VIII Rule 1 C.P.C. The respondent/plaintiff should have therefore filed the

rejoinder to the counter-claim within 30 days from the date of service of written statement-cum-counter-claim, which may be extended upto 90 days for reasons to be recorded in writing by the Court below.

26. Dealing with such time limits, the Supreme Court in **Salem Advocate Bar Association** (1 supra) observed that though the upper limit of 90 days to file written statement in Order VIII Rule 1 C.P.C. is directory, the order extending time to file written statement cannot be made in a routine manner and time can be extended only in exceptionally hard cases. It observed that while extending time, it has to be borne in mind that the Legislature has fixed the upper time limit of 90 days and the discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order VIII Rule 1.

27. In the said judgment, the power of the Court to extend time under Section 148 C.P.C. for doing any act prescribed or allowed by the Court was also discussed and it was observed that though the Amendment Act 22 of 2002 to the Code of Civil Procedure restricted that the period should not extend 30 days in total, the Court has inherent power to extend the time beyond the period of 30 days for the ends of justice and to prevent the abuse of process of Court. It referred to the judgment of the Supreme Court in **Mahanth Ram Das** (5 supra) wherein the Supreme Court had observed that power under Section 148 C.P.C. should be exercised by the Court to extend time and it can take note of the events and circumstances which happened within the time fixed. It observed:

“How undesirable it is to fix time peremptorily for a future happening which leaves the Court powerless to deal with events that might arise in between, it is not necessary to decide in this appeal. These orders turn out often enough to be inexpedient. Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves on the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians.”

28. The Supreme Court in **Salem Advocate Bar Association** (1 supra) went on to add that there can be many cases where non-grant of extension beyond 30 days would amount to failure of justice; that the object of the Code is not to promote failure of justice; and so Section 148 C.P.C. should be read down to mean that where sufficient cause exists or events are beyond the control of a party, the Court would have inherent power to extend time beyond 30 days.

29. In **Kailash** (8 supra) also, the Supreme Court reiterated what was said in **Salem Advocate Bar Association** (1 supra) in the following words:

“46. We sum up and briefly state our conclusions as under:

(i)

(ii)

(iii)

(iv)

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.”

30. In view of these two Supreme Court judgments dealing with amendment to Code of Civil Procedure by Amending Act 22 of 2002 w.e.f. 01-07-2002, I do not propose to deal with other earlier decisions cited by the parties.

31. Suffice it to say that though time period prescribed in Order VIII Rule 1 C.P.C. to file written statement i.e. 30 days from the date of service of summons is applicable by virtue of Order VIII Rule 6-G C.P.C. for filing written statement by a plaintiff / rejoinder to a counter-claim made by the defendant and normally within 30 days from the date of receipt of copy of the written statement-cum-counter-claim, it ought to be filed, in exceptional cases, the Court can, for reasons to be recorded, extend that period upto 90 days and beyond. But such extension ought not to be granted as a matter of routine,

merely for asking. Extension of time can be allowed only in exceptional cases where there are established that by reasons beyond the control of the defendant, he could not file it with the time fixed by statute, and grave injustice would be occasioned if time is not granted.

32. In the instant case, when written statement-cum-counter-claim was filed way back in the year 2011, and when I.A.No.1070 of 2016 was filed by respondent to exclude the counter-claim was filed only 02-12-2016, more than 5 years later, the Court below cannot in a routine manner extend time to file rejoinder to the counter-claim at request of the respondent/plaintiff till I.A.No.1070 of 2016 is decided.

33. Nothing prevented the respondent to file rejoinder to the counter-claim without prejudice to his right in I.A.No.1070 of 2016 after I.A.No.1070 of 2016 was filed, or to file such a rejoinder to the counter-claim first and then file an application under Order VIII Rule 6-C C.P.C.

34. The Court below appears to have totally lost sight of the principle laid down in **Kailash** (8 supra) and **Salem Advocate Bar Association** (1 supra) referred to above that as a matter of routine, extension of time cannot of be granted and when no exceptional circumstances are pointed out by respondent warranting grant of extension of time to him to file rejoinder to the counter-claim.

35. Accordingly, the Civil Revision Petition is allowed; order dt.08-11-2017 in I.A.No.784 of 2017 in O.S.No.52 of 2011 of the

XXVII Additional Chief Judge, City Civil Court, Secunderabad is set aside; and the said I.A. is dismissed. No costs.

36. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-08-2019

Vsv

