

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

Hon'ble Justice Shampa Sarkar

C.O. No. 490 of 2021

Sri Sukdev Saha alias Sukdeb Saha

vs.

Sri Tusher Kanti Sengupta

For the petitioner : Mr. Purnasish Gupta,
Ms. Mary Dutta.

For the opposite parties : Mrs. Sohini Chakraborty,
Mr. Suvadip Bhattacharya.

Hearing concluded on: 27.04.2021

Judgment on: 03.06.2021

Shampa Sarkar, J.:-

1. The revisional application arises out of an order dated December 16, 2020 passed by the learned Civil Judge (Junior Division), Bidhannagar, in Title Suit No.63 of 2019. The petitioner is aggrieved by the portion of the order by which the application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure dated October 5, 2020 filed by the defendant was allowed on contest. The petitioner contended that the counter-claim sought to be incorporated in the written statement by way of an amendment of the written statement was not maintainable in the eye of

law. Thus such portion of the order impugned suffered from jurisdictional error.

2. The first contention of the petitioner was that the counter-claim was not properly valued. The first prayer for declaration in the counter-claim that the defendant was entitled to get recovery of possession, was barred by law, in view of the fact that a relief for declaration without any prayer for recovery of possession was hit by the proviso to Section 34 of the Specific Relief Act, 1963. It was further contended that had the reliefs in the counter-claim been correctly stated and valued, the learned Civil Judge (Junior Division) Bidhannagar would not have the pecuniary jurisdiction to decide the said suit and the counter-claim. Learned Advocate for the petitioner further submitted that the counter-claim could not be entertained in view of the fact that the defendant could not have valued the counter-claim as one for eviction of a trespasser but as a suit for eviction of a licensee, when admittedly, the defendant had acknowledged throughout the body of the written statement that the plaintiff was a licensee. The counter-claim was under-valued and the prayers were also barred by law. Learned Advocate for the petitioner relied on the following decisions:- **Mehar Chand Das vs. Lal Babu Siddique & Ors.** reported in (2007) 14 SCC 253, **Nellimarla Jute Mills Company Ltd. vs. Rampuria Industries and Investments Ltd.** reported in CAL LJ 2000(2) 70, **Union of India vs. Ibrahim Uddin & Anr.**, reported in AIR (SC)(Civ) 1571 and **Vinay Krishna vs. Keshav Chandra and Anr.**, reported in 1993 Supp 3 SCC 129.

3. Mrs. Sohini Chakraborty, learned Advocate appearing on behalf of the opposite party submitted that at the time of consideration of the amendment of the written statement for incorporation of the counter-claim, the learned Court was not required to go into the merits of the counter-claim. The amendment was rightly allowed in order to avoid multiplicity of proceedings as the issues involved in the plaint and the counter-claim could be disposed of in one suit. She further submitted that, whether the counter-claim was barred by law or whether the learned trial court had lost its pecuniary jurisdiction to try the suit and the counter-claim, were issues to be decided at a later stage and the petitioner was always at liberty to raise these objections in the written statement to be filed in response to the counter-claim. She further submitted that the suit was one for eviction of a trespasser as the licence granted to the petitioner was neither revoked nor terminated. Her contention was that the licence expired due to efflux of time and the petitioner continued to reside in the premises as a trespasser without handing over possession of the suit property even after the period of leave and license had expired. She further submitted that the provisions of The Suits Valuation Act, 1887, could be invoked by the learned Court below, if the petitioners raised the point of pecuniary jurisdiction or under-valuation, at the appropriate stage. She relied on the decision of **Ramesh Chand Ardawatiya v. Anil Panjwani** reported in **(2003) 7 SCC 350** in order to urge that it was a well settled principle of law that a counter-claim could be filed by way of an amendment of the written statement and in this case, there was no illegality or material irregularity on the part of the learned Court below in allowing such amendment. She urged that the learned Court

by enabling both the parties to place their claim and counter-claim could adjudicate their respective contentions in the same judicial proceedings which would save judicial time. The said counter-claim was filed at an early stage of the suit and as such, the defendant could not be barred under any law from incorporating the counter-claim, by way of an amendment. She submitted that the merits of the counter-claim would be decided later. She also relied on the decision of **Rajesh Kumar Aggarwal and Ors. vs. K.K. Modi and Ors.**, reported in **(2006) 4 SCC 385**, in support of her contention that Courts should allow amendments that may be necessary for determining the real question in controversy between the parties, provided it did not cause injustice or prejudice to the other side. The Court should not go into the correctness of the amendments and was not required to record a finding on the merits of the amendment at the stage of considering the prayer for amendment. She submitted that if it was permissible for a party to file an independent suit on the same cause of action, in such event, a counter-claim should be allowed. Thus the learned Court was within its jurisdiction to allow the amendment in this case.

4. I have heard the contentions of the respective parties. Right to file a counter-claim is an additional right. The counter-claim must have nexus with the suit. The defendant must have an independent cause of action in the nature of a cross action.

5. In this case, the application for amendment of the written statement for incorporation of the counter-claim was filed at an early stage of the suit. The counter-claim is a cross suit. The petitioner/plaintiff will get an

opportunity to file a written statement to the counter-claim and raise all the objections, which have been raised now. The petitioner may also file appropriate applications raising such contentions at an appropriate stage, as per law. Moreover, the learned Court will decide the merits of the suit in the plaint as also the counter-claim including the point of jurisdiction, valuation and maintainability. In this case, the plaintiff filed a suit for declaration that he was a monthly tenant under the defendant and was entitled to use the suit premises until he was evicted by due process of law. The plaintiff also prayed for further declaration that the defendant did not have any right to interfere with the possession of the plaintiff with regard to the suit property. A prayer for permanent injunction was also made for an order restraining the defendant from disturbing or dispossessing the plaintiff from the suit property and from causing wastage and damage to the plaintiff's peaceful enjoyment of the suit property.

6. The defendant contested the said suit by filing a written statement. In the written statement, it was the specific contention of the defendant that the plaintiff was initially a licensee and was permitted to reside in the suit property for a period of 11 months under a leave and licence agreement. The licence fee was Rs.5000/- per month. Thereafter, the said leave and licence agreement was renewed from time to time. The plaintiff had earlier failed to pay the licence fee for the month of September, 2016. At the request of the plaintiff, the leave and licence agreement was again renewed on February 1, 2017. The plaintiff continued to default in payment of the licence fee and on expiry of the term contained in the last agreement dated February 1, 2017,

the defendant did not renew the lease and licence agreement and the plaintiff agreed to hand over vacant possession and also to pay the outstanding licence fees. The plaintiff failed to hand over vacant possession and the defendant lodged a complaint with the police. The defendant denied the allegations of the plaintiff that the defendant along with 10 rowdy people entered the premises and threatened to slaughter the plaintiff.

7. Thereafter the defendant filed the application for amendment in order to incorporate the counter-claim. It was the further contention of the defendant that after expiry of the last leave and licence agreement dated February 1, 2017, the defendant had neither renewed nor terminated the leave and licence agreement. It was also the defendants' case that the plaintiff had also started structural addition, alteration and demolition without any permission and that the plaintiff was a trespasser as the leave and licence agreement had expired long ago. Accordingly the written statement was required to be amended in order to incorporate the counter-claim for the reliefs sought for with regard to the alleged illegal occupation of the suit property by the plaintiff. It is an admitted position that the counter-claim was filed at the stage of hearing of the interlocutory applications and issues had not been framed. There was no delay in filing the amendment for incorporation of the counter-claim. The contentions of the defendants arise out the self-same property in respect of which a suit is already pending. The cause of actions are connected. The counter-claim is a cross-action in this case.

8. With regard to the contention of the petitioner that the prayer for declaration in the counter-claim could not be allowed without a prayer for recovery of khas possession, this Court is of the opinion that the merits of the Counter-claim will be decided at a later stage. The counter-claim will be adjudicated as a cross suit and issues will also be framed as to maintainability of the same.

9. All points including the bar under proviso to Section 34 of the Specific Relief Act will be decided at the trial or at the appropriate stage when the petitioner invites the learned Court to decide such issues. Secondly, the question of valuation of the suit jurisdiction of the Court etc. can also to be decided at a later stage and the learned Court can embark upon on an enquiry at an appropriate stage, but the learned Court cannot be called upon to decide the merits of the counter-claim at the stage of consideration of the application for amendment of the written statement. This is a suit for declaration of tenancy and permanent injunction filed by the petitioner. The opposite party/defendant being the landlord has filed a counter-claim against the plaintiff who according to the defendant was a trespasser. Now the question as to whether the defendant was entitled to get a decree on the basis of the prayers as made in the counter-claim is not to be decided at the stage of filing of the counter-claim. The merits of the counter-claim will be decided at the appropriate stage and the plaintiff/petitioner will be free to raise all such objections in his written statement to the counter-claim and also by filing appropriate applications if permitted by law. The order allowing the amendment is justified. Multiplicity of proceedings can be avoided and

the parties will be able to get their rival claims adjudicated in one proceeding which would save judicial time and expenditure.

10. All points raised by the plaintiff/petitioner are left open for the learned trial judge to consider at the appropriate stage. The decisions cited by the learned Advocate for the petitioner are not dealt with as they are with regard to the merits of the prayers in the counter-claim which need not be addressed now in view of the aforesaid discussions.

11. Under such circumstances, the revisional application is disposed of. There shall be no order as to costs.

12. Time to file amended written statement is extended by a period of one month from date (if not already filed) and be served upon the plaintiff. Thereafter the learned Court below shall proceed with the matter by passing appropriate directions in accordance with law upon granting liberty to the petitioner to file the written statement to the counter-claim.

Urgent Photostat Certified Copy of this judgment, if applied for, be given to the parties, on priority basis.

(Shampa Sarkar, J.)