

GOUR SAHA & ORS. VS. ASHOK KUMAR ROY & ORS.

Mr. Gopal Ghosh
..for the petitioners
Mr. Shyamal Kumar Das
Ms. Smita Pal
..for the opposite party nos. 1-7

This revisional application has been filed challenging an order dated August 8, 2019 passed by the learned Civil Judge, Junior Division, Bidhannagar, North 24 Parganas in Title Suit No. 310 of 2008.

By the order impugned, the learned Trial Judge rejected an application under Order 6 Rule 17 read with Order 8 Rule 6A of the Code of Civil Procedure. The defendants/petitioners prayed for leave to file counter-claim in Title Suit No. 310 of 2008.

The schedule of proposed amendment is quoted below :-

“After the paragraph No. 12 of the written statement the following statements are required as paragraph No. 12(a). 12(b) and 12(c).

12(a) That the defendants are enjoying the entire premises No. 360 Jassore Road Plot No. 20 now 6, Shyama Prosad Colony consisting homestead land measuring more or less 2 ¼ Cottahs containing of three rooms made of brick wall tin shed, Kolkata – 700 055 P.S. Lake Town, District : 24-Parganas (N) morefully described in the Sch3edule below of, the written statement as absolute owner. But for existence of the alleged Lease Deed made by R.R.& R. Department and for mutation before the Municipality the defendants’ right title interest and possession have been

clouded. And for that the defendants have sent statutory Notice U/s. 80 of the C.P. Code and Section 407 of Bengal Municipal Act to get appropriate reliefs from those Authorities as prayed herein below by letter dt. 12.5.2016. but inspite of service of notice upon them they did not comply the requisition made therein to avoid multiplicity of proceedings the defendants instead of filing separate suit have been advised to set up counter claim in this suit to get appropriate relief as prayed herein below.

12(b) That the cause of action of the counter claim arose on and from the expiration of period of Notice dt. 12.5.2016 and thereafter day to day at premises No. 360 Jessore Road at 6, Shyama Prasad Colony, Kolkata – 700 055 P.S. Lake Town District 24-Parganas (N) within the jurisdiction of this Ld. Court.

12(c) That for the jurisdiction and Court Fees the counter claim is valued Rs. 300/- being Rs. 100/- for declaration. Rs. 100/- for mandatory injunction and Rs. 100/- for permanent injunction and that the advelorem Court Fees paid accordingly”.

The prayers sought to be incorporated by way of counter-claim are quoted below :

“After the prayer of the written statement following prayers would be incorporated.

“ The defendants therefore pray for decree upon counter claim.

(a)For Declaration that the defendants are the absolute owner of the entire property being Plot No. 20, now 6,Shyama Prasad Colony at 360, Jessore Road Kolkata- 700 055 P.S. Lake Town, District 24-Parganas(N) morefully described in the schedule herein below.

(b)For declaration the impugned Deed of Lease dt. 8.9.1983 recorded in Book No. 1 Vol. No 1 pages 17-20 being No. 5 for the year 1983 registered in the office of Sub-Registrar Cossipore Dum Dum made by R.R & R. Department in the name of Shyampada Roy is null and void abinitio.

(c) For declaration that the mutation I the office of the Municipality in the name of Shyamapada Roy in respect of bifurcated portion of the aforesaid premises o the basis of the void Deed of Lease dated 08.09.1983 is bad and has been mutated wrongly.

(d)For mandatory injunction directly the R.R.& R. Department for executing a proper Deed in the name of the defendants being the heirs of Jagabandhu Saha on the basis of Letter authorization to occupy the schedule property in favour of the defendants’ predecessor Jagabandu Saha.

(e)For Permanent Injunction.

(f)For any other relief or reliefs as the defendants are entitled in law and equity.

(g)For Cost of the Counter claim”.

I have heard the parties.

The written statement contains the basis of the

proposed amendment. The written statement also contains the basis of the prayers to be included as a counter-claim. These are admitted facts, which the learned Trial Judge recorded. What prevailed upon the learned Trial Judge while refusing to allow the amendment along with the proposed counter-claim is the delay. According to the learned Trial Judge, the facts were already in the knowledge of the defendants/petitioners. The suit was filed some time in 2008. The written statement was filed in 2009 and the counter-claim was sought to be filed in 2020. On the ground of delay, the counter-claim was rejected.

Having gone through the pleadings and the application under Order 6 Rule 17 read with Order 8 Rule 6A of the Code of Civil Procedure, this Court finds that the same are necessary for proper adjudication of the disputes as also to avoid multiplicity of the proceeding. Challenge to the deed has already been thrown in paragraph 10 of the written statement. Prayers for declaration of title, upon declaration of the deed of lease to be void and *ab initio* has been sought for by way of a counter-claim. Pleadings in this regard have already been made. Unless the counter-claims are allowed the defendants will be forced to file another suit for the same relief and that will only create multiplicity of proceeding and may also result in contradictory decisions. Whereas, in the instant suit itself

the entire claims and counter-claims of the parties can be decided and prolonged and unnecessary litigation can be avoided. It is also a fact that trial has not commenced and issues have not yet been framed. Thus, no serious prejudice is going to be caused for the delay.

In the decision of **Ashok Kumar Kalra Vs. Wing CRD. Surendra Agnihotri & ors. reported in (2020 |) 2 SCC**. The Hon'ble Apex Court has held that in exercise of discretionary power while allowing a counter-claim, which has been filed belatedly, a balanced approach should be adopted by the Court. Paragraph 45 of the said decision is quoted below :-

"45. Further, the contention that the limitation on filing of set-offs under Order 8 Rule 6 should be read into Rule 6-A(1) is untenable. The nature of a set-off and a counterclaim is different. For instance, a set-off must necessarily be of the same nature as the claim of the plaintiff and arise out of the same transactions. These requirements do not hold for counterclaim which may be related to "any right or claim in respect of a cause of action accruing to the defendant against the plaintiff" as stated in order 8 Rule 6-A(1). Further, in case of set-offs, there is no provision akin to Order 8 Rule 6-A(4), which provides that a set-off must be treated as a plaint. Thus, it appears that the legislature has consciously considered it fit to omit a specific time-limit for filing of counterclaims in Rule 6-A. In such a scenario, a limitation cannot be read into this Rule."

The reason for delay has been explained in the application. It is the specific case of the defendants that only after the RR & R Department was added as a defendant in the suit, the defendants came to know of the existence of the deed of lease and the application was filed.

This Court does not need to get into this issues. Whether the prayers in the counter-claim are time barred

or not are matters to be decided as a separate issue in the suit. Point of limitation is a question of law and fact and the learned Court below shall decide the same in accordance with law at the trial.

The order impugned is quashed and set aside.

The application for amendment along with the counter-claim is allowed. The learned Court below shall accept the counter-claim upon payment of costs of Rs.3,000/- to the plaintiffs. Such costs to be paid by the learned Advocate on record for the defendants to the learned Advocate on record for the plaintiffs in cash. Receipt showing such payments shall be deposited in the learned Court below. Such payments should be made within 15 days from date. The learned Court below upon satisfying itself that the costs have been paid, shall proceed with the suit by allowing the counter-claim to be incorporated in the written statement filed by the defendants.

Liberty is given to the plaintiffs to file their written statement to the counter-claim within a month from the date of receipt of the amended written statement.

As there has been a considerable delay in the proceeding, the learned Court below is directed to dispose of the suit expeditiously preferably within a period of one year from the date of communication of this order without granting any unnecessary adjournments to either of the

parties.

This revisional application is disposed of.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)

