

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

CIVIL REVISION PETITION No.2957 of 2019

ORDER:

This revision is filed challenging the docket order dated 13.09.2019 in OS.SR.No.529 of 2018 in O.S.No.233 of 2011 passed by the I Additional Junior Civil Judge, Kukatpally, whereunder the defendant/respondent herein was permitted to file counter claim.

2. The suit in O.S.No.233 of 2011 was filed by the petitioner/plaintiff for perpetual injunction restraining the respondent/defendant from interfering with his peaceful possession and enjoyment over the suit schedule property. The suit was filed on 12.07.2011. The respondent/defendant filed written statement on 02.11.2011. It appears counter claim was filed on 14.09.2017. There is no separate petition filed by the respondent under Order VIII Rule 6-A of the Code of Civil Procedure, 1908, for receiving the counter claim. It appears on oral application of the respondent/defendant, the counter claim was taken on record.

3. Heard both sides.

4. A counter claim filed has to satisfy the conditions laid down under Order VIII Rule 6-A CPC. The provision clearly lays down that a counter claim cannot be permitted after written statement is filed and evidence is commenced. Curiously, the Court below ignored the mandatory provision and passed the docket order. It needs to be noted that permission granted to the respondent to file counter claim cannot be a mere formality. The Court should not have permitted an oral application to be made by the respondent. It was necessary for the respondent to file a proper application under Order VIII Rule 6-A

CPC explaining the reasons for the delay in filing the counter claim, necessity to file counter claim and also satisfy the conditions laid down under Order VIII Rule 6-A CPC. Without resorting to such procedure, the Court below passed the impugned order. The order is unsustainable and contrary to the procedure laid down under law.

5. The civil revision petition is allowed. The impugned order is set aside. The respondent is given liberty to seek permission of the Court below to file counter claim by filing an appropriate application. The Court below shall pass order on merits duly taking consideration the factors enumerated under Order VIII Rule 6-A CPC and dispose of the same in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

July 22, 2021
DSK

B. VIJAYSEN REDDY, J