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C.O. 2261 of 2022

**Smt. Namita Harbab
Vs
Smt. Chandi Bala Ghosh**

Mr. Ranjan Kumar Kali,
Mr. Diganta Das,
Ms. Avipriya Bose,

... For the petitioner.

Mr. Kishore Mukherjee,

... For the opposite party.

The subject matter of challenge in this case is against the acceptance of a written statement filed by the defendant containing counter claim beyond the stipulated period of time, and that too, furnished by some of the persons, who are neither impleaded as defendants in this case, nor a constituted power of attorney of impleaded defendant.

Admittedly, this is a suit for declaration of tenancy right, where Smt Chandi Bala Ghosh is impleaded as defendant.

Learned advocate appearing for the petitioner submits that the written statement containing counter claim has been furnished by three sons of the original defendant, who are not parties to this case, though the affidavit has been sworn by the constituted power of attorney for the defendant.

It is contended by the petitioner that the written statement containing counter claim may be filed either

by the defendant herself in this case, or by her constituted power of attorney.

Though, in this case constituted power of attorney has sworn the affidavit, but the sons of the original defendant may not be permitted to initiate a counter claim, which is without sanction of the law, learned advocate for the defendant argues.

Per contra, learned advocate for the opposite party submits that since power of attorney has been given by original defendant, the constituted power of attorney-holder, has sworn the affidavit connected with the written statement, which was, however, signed by the sons of the original defendant.

It is thus proposed by the learned advocate for the opposite party that the persons signing the written statement containing counter claim, being the sons of the original defendant, such written statement containing counter claim has been rightly accepted by the Court below.

Having considered the submissions of both sides, it appears that acceptance of a written statement containing counter claim, signed by the persons, not made parties, as defendants, in this case, is the only point of challenge in this case.

There cannot be any controversy regarding filing of the written statement containing counter claim, if

any, either by the defendant himself or by the constituted power of attorney of the defendant.

Such written statement containing counter claim as such may be filed within the time limit prescribed in the Code of Civil Procedure.

The Court below, while accepting the written statement, has not subscribed any independent reasons as to why the written statement containing counter claim was accepted upon permitting the sons of the defendant to furnish counter claim in this case.

In the absence of any reasons being assigned, acceptance of the written statement containing counter claim is not sustainable.

The impugned order accepting written statement containing counter claim is set aside with liberty to the opposite party to furnish fresh written statement containing counter claim, if any, either by defendant herself or by the authorised party, as available in the Code of Civil Procedure, within ten days from the date of communication of this order to the Court below.

While accepting the written statement, the points if any taken by the petitioner regarding law points, that may be considered and resolved in accordance with law.

It is, however, clarified that written statement as such may be accepted by the Court below after giving a hearing for the purpose in context with the observation

made hereinabove, preferably before the end of December 2022.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)