

04.11.2022
Item No.51
BR

CO 4357 of 2018

Abhay Kumar Verma & anr.

Vs.

Krishna Kanta Sen & Ors..

Ms. Shebatee Datta,

Ms. Poulami Roy

... for the Petitioners

Mr. Prosenjit Mukherjee,

Mr. Saptarshi Chakraborty

...for the opposite partyno.1

Affidavit of service filed by the petitioner
be taken on record.

Being aggrieved and dissatisfied with the
order dated 3rd August, 2018 passed by learned
Civil Judge (junior Division), 6th Court at Howrah
in Title Suit No. 448 of 2016, present revisional
application has been preferred .By the impugned
order learned trial Court has been pleased to
allow defendants' application for amendment
under order VI Rule 17 of the Code of Civil
Procedure dated 17th May, 2018 whereby
defendant prayed to incorporate certain
amendments in written statement and has also
prayed to incorporate counter-claim .

Petitioners contended that petitioners as
plaintiffs filed suit for declaration of title and
injunction before the Court of learned Civil Judge
(Junior Division) , 2nd Court at Sealdah against
the opposite parties and the same was
registered as Title Suit No. 448 of 2016. In the
said suit plaintiffs contended that plaintiffs
acquired title in the suit property by virtue of

registered deed of sale dated September 29, 2014 and they are in actual possession of the same. Plaintiffs , however, alleged in the plaint that on and from 3rd January, 2016, the defendants started claiming their right, title and interest over the suit property and they are threatening to dispossess the plaintiffs from the suit property. The defendant no. 1 appeared in the said suit and filed written statement long back on July 5, 2016. Subsequently on May 17, 2018 the defendant No. 1 /opposite party herein took out an application under Order VI Rule 17 for amendment of the written statement, by which they wanted to introduce counter-claim and in the said application the defendant contended that the cause of action of the counter-claim arise on 4.10.2005, 3.12.2005 , 22.1.2007 , 23.8.2013, 7.4.2018 and 6.5.2018 and various other dates.

The plaintiffs/petitioners filed written objection against that amendment petition contending that if the prayer for amendment is allowed it will change the nature and character of the suit and further contended that the counter-claim is barred by law of limitation. It was further contended by the plaintiffs that by way of counter-claim defendant no. 1 practically trying to make out a counter-case.

The learned trial Court had taken up said application for amendment for hearing and was pleased to allow the prayer for amendment by passing the impugned order.

Ms. Shebatee Datta, learned counsel appearing on behalf of the petitioners contended

that trial Court has acted illegally and with material irregularity in exercise of its jurisdiction vested upon him and misconstrued settled principles of law that right to file counterclaim under Order VIII Rule 6A is referable to the date of accrual of cause of action and such cause of action ought to be either before or after filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired and in view of the statutory provisions, the trial Court ought not to have allowed the prayer for amendment. She further contended that the counter-claim is barred by limitation as the cause of action for the counter -claim must arise before filing of the written statement. Here the learned trial Court has overlooked the fact that as per the schedule to the amendment application, the cause of action arose on 7.4.2018 and 5.6.2018 whereas the written statement was filed on July 5, 2016 so it is beyond the prescribed period of limitation.

Mr. Mukherjee, learned counsel appearing for the opposite party submits that from the schedule of the prayer for counter-claim, it is apparent that in the counter-claim prayer has been made for declaration that the deed of sale dated 23.8.2013 executed in favour of defendant no. 1 is a valid deed binding upon all the parties and also for a declaration that deed of plaintiff dated 26.9.2014 as described by the plaintiff in their plaint is void deed and not binding upon defendant no.1. On the contrary, from the plaint it is clear that plaintiffs have claimed their right , title and interest in the suit property by virtue of

deed of purchase dated 29.09.2014. Accordingly in order to decide the real ownership in the suit property the plaintiffs claim and the defendants counter-claim are required to be considered analogously in a particular suit otherwise there is serious chance of multiplicity of proceedings over the selfsame property. In view of such matter it is contended that the trial Court was justified in allowing both the defendants prayer for amendment of the written statement and also the prayer for incorporation of counter-claim in the written statement.

Having considered the submissions made by both the parties it is clear that the issues have not yet been framed. The Court has the discretionary power to consider a belated counter-claim filed even after submission of the written statement, if it appears before the Court that for the ends of justice and to avoid multiplicity of suits the issues are required to be disposed of in the same proceeding, provided cause of action for the counter claim accrued before filing of written statement or before expiry of time for delivery of defence. Rule 6 A of order VIII makes it clear that application for counterclaim is not liable to be dismissed solely on the ground that it was filed after filing of written statements if it is shown that the cause of action for amendment arose before filing of written statement. Again cause of action is not confined to a particular date but the whole of the material facts, which it is necessary for the plaintiff of the counter claim to allege and prove in order to succeed. Cause of action consists of a bundle of facts which give cause to enforce the

legal injury for redress in a court of law. The factor which needs to be traced is a balanced approach of Court in exercise of the discretionary power where counter claim is filed after submission of the written statement and factors to be considered for exercise of the discretionary power is to see that it has not caused prejudice to the other side. It is clear from plaint that plaintiffs have claimed their right, title and interest in the suit property and has prayed for declaration that they have acquired right, title and interest in the suit property described in the schedule by way of deed of sale dated 29.09.2014. On the contrary, defendants have claimed in the counterclaim that they have acquired title in the suit property by way of deed of sale dated 23.8.2013 executed in favour of defendant no. 1 which is binding upon the plaintiffs. The defendant also in counter-claim has prayed for permanent injunction.

So defendants cause of action for the counter claim arose long back before filing of his written statement. Actually the cause of action means every fact, which if traversed, it would be necessary for the plaintiff of the counterclaim in order to prove and support his right to a judgment of the court. It comprises bundle of essential facts constituting the right and its infringement which entitled a person to sue the wrong doer. As such, in the present context, I do not find any substance in the petitioner's contention that the cause of action for the counter claim arose after filing of written

statement i.e. after July 05, 2016 when the written statement was filed.

In view of aforesaid facts and circumstances of the case and to avoid multiplicity of proceeding, I find that the trial Court was justified in allowing the defendants application under Order VI Rule 17 of the Code of Civil Procedure. I am also of the view that the plaintiffs will not have any cause to prejudice, if the opportunity of filing written statement against the counter-claim is given to them.

Accordingly, CO 4357 of 2018 is dismissed.

This dismissal order will not preclude the plaintiffs/petitioners to file written statement before the trial Court against the counter-claim. On filing such written statement, if any, by the petitioners the trial Court shall frame the issues accordingly and will make every endeavour to dispose of the case as expeditiously as possible preferably within a period of one year from the date of framing of issue.

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

(Ajoy Kumar Mukherjee, J.)