

IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.668 OF 2018

Pravakar Sahoo

Petitioner

Mr. Bibekananda Bhuyan, Advocate

-versus-

Nazia Tahir and others

.... ***Opp. Parties***

Mr. N.P. Parija, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
21.07.2022

Order No.

8. 1. This matter is taken up through hybrid mode.
2. Order dated 2nd February, 2018 (Annexure-6) passed by learned District Judge, Cuttack in Transfer Petition (Civil) No.5 of 2017 is under challenge in this CMP.
3. Brief facts necessary for adjudication of the case is that the Petitioner as Plaintiff filed C.S. No.73 of 2015 in the court of learned Civil Judge (Junior Division), Salipur for permanent injunction valuing the relief claimed at Rs.200/-. On receiving summons, the Defendants Nos.3 to 6 appeared and filed written statement along with counter claim on 27th October, 2016 claiming damages of Rs.33,10,000/-. The office note of the counter claim was made ready on 15th March, 2017 in which it was indicated that the value of the counter claim exceeds the pecuniary jurisdiction of the said court and thus, the same may not be maintainable. As such, learned Civil Judge (Junior Division), Salipur posted the matter to 10th April, 2017 for consideration of the question of maintainability of the counter claim. In the interregnum, the Defendant Nos.3 to 6 filed Transfer Petition (Civil) No.5 of 2017 before learned District

Judge, Cuttack to transfer Civil Suit No.73 of 2015 pending before learned Civil Judge (Junior Division), Salipur to the court of learned Civil Judge (Senior Division), Salipur. The said application being allowed vide order under Annexure-6 is under challenge in this CMP.

4. Mr. Bhuyan, learned counsel for the Plaintiff-Petitioner submits that proviso to Order VIII sub-rule (1) of Rule 6(A) C.P.C. clearly bars a counter claim which exceeds the pecuniary jurisdiction of the Court in which the suit is pending. The Plaintiff is the *dominus litis* and he chooses the Court before whom it can claim the relief in accordance with law. By allowing the petition under Section 24 C.P.C., learned Civil Judge virtually made the restrictions under proviso to Order VIII sub-rule (1) of Rule 6(A) C.P.C. redundant. It is his submission that the Defendant Nos.3 to 6 could have filed a separate suit for damages but if they want to file a counter claim it has to be limited to the pecuniary jurisdiction of the Court in which the suit is filed. Mr. Bhuyan, learned counsel relies upon the decision in the case of ***Jagmohan Chawla and another –v- Dera Radha Swami Satsang and others***, reported in AIR 1996 SC 2222 and submits that in a suit for permanent injunction, counter claim of damages can be filed and there is no legal bar for the same. The property and cause of action may also be different but it cannot exceed the pecuniary jurisdiction of the Court in which the suit is pending. By allowing an application under Section 24 C.P.C, learned District Judge has made the Plaintiff to pursue his suit in a Court of choice of the Defendant,

which should be deprecated. The judicial discipline must be respected by the parties to the proceeding.

5. Section 15 of the Civil Court's Act limits the pecuniary jurisdiction of learned Civil Judge (Junior Division) to Rs.50,000/-. Thus, apparently counter claim of damages to the tune of Rs. 33,10,000/- is not maintainable before the said Court. Hence, the counter claim on the face of it is not maintainable. Learned District Judge has not taken into consideration this aspect which vitiates the entire proceeding being contrary to the provision of law. Hence, he prays for setting aside the impugned order.

6. Mr. Parija, learned counsel for the Defendants-Opposite Party Nos.3 to 6 submits that there is no illegality in the impugned order as such. A counter claim has to be adjudicated as a separate suit. The Plaintiff by filing a suit in a particular Court cannot limit the relief to be claimed by the Defendant in a counter claim. He also submits that a suit for permanent injunction can also be decided by learned Civil Judge (Senior Division). Thus, there is no legal infraction in transferring the suit from the Court of learned Civil Judge (Junior Division), Salipur to the Court of learned Civil Judge (Senior Division), Salipur for consideration of both the suit as well as counter claim. A counter claim is filed to shorten the litigation and avoid multiplicity of litigation, which has been taken care of in the impugned order. Assailing the impugned order, the Plaintiff impliedly has made an endeavour to deprive the Defendants from claiming a relief of their entitlement. Hence, the CMP merits no consideration and is liable to be dismissed.

7. Sub-rule (1) of Rule 6(A) C.P.C under Order VIII reads as follows:

“6A. Counter-claim by defendant.-

(1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court. “

Thus, a counter claim shall not exceed the pecuniary limits of the jurisdiction of the Court in which the suit has been filed. This aspect was not taken into consideration by learned District Judge while adjudicating the petition under Section 24 C.P.C.

8. On perusal of the record, it appears that the counter claim of damages has been made for a sum of Rs.33,10,000/-, which certainly exceeds the pecuniary jurisdiction of learned Civil Judge, (Junior Division), Salipur, which is limited to Rs.50,000/-. There is no bar for the Defendant Nos. 3 to 6 to file a separate suit claiming damages but if they want to maintain a counter claim of damages, they have to limit their relief to the pecuniary limits of the Court in which the suit is pending.

9. The contention of Mr. Parija, learned counsel for the Opposite parties to the effect that learned Civil Judge (Senior Division), Salipour has the jurisdiction to decide the suit for permanent injunction as well as the counter claim. Hence, there is

no illegality in transferring the suit to a court having competent jurisdiction to decide the same. Such a contention is not sustainable inasmuch as in the instant case it is not in question that learned Civil Judge (Senior Division), Salipur has no jurisdiction to decide the suit for permanent injunction in which the relief is valued at Rs. 200/-, but the issue involved in this case relates to maintainability of the counter claim in a Court in which the suit has been filed. In the instant case, a counter claim of Rs.33,10,000/- is certainly not maintainable before learned Civil Judge (Junior Division), Salipur. If the contention of Mr. Parija, learned counsel for the Opposite Parties-Defendants is accepted, then proviso to Order VIII Rule 6(A)(1) C.P.C. will become redundant. The legislature has introduced the provision to maintain a judicial discipline, which is to be respected by the Court as well as the parties to the suit. In the instant case, the procedure adopted by the Defendant Nos.3 to 6 will compel the Plaintiff to pursue his suit in the Court of choice of the Defendants, which can never be object and intent of law. In that view of the matter, the impugned order under Annexure-6 is not sustainable and accordingly, the same is set aside.

10. The CMP is allowed to the extent stated above.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge