

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.1026 of 2018**

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1. Uday Shankar Pandit
2. Suresh Prasad Pandit @ Suresh Pandit,
3. Subodh Pandit,
4. Rajesh Prasad Pandit, All sons of Late Banarsi Pandit and all resident of Mohalla- Warashaliganj, P.O.- Mirjanhat, P.S.- Babarganj, District- Bhagalpur.

... .. Petitioner/s

Versus

1. Gurudeo Pandit
2. Ramdeo Pandit
3. Laxman Pandit, All sons of Biro Pandit, all resident of Mohalla- Warashaliganj, P.O.- Mirjanhat, P.S.- Babarganj, District- Bhagalpur.
4. Suresh Pandit
5. Nand Kishore Pandit Both sons of Late Parmeshwar Pandit Both resident of Mohalla- Warashaliganj, P.O.- Mirjanhat, P.S.- Babarganj, District- Bhagalpur.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Deepak Kumar Sinha  
For the Respondent/s : Mr. Brij Nandad Prasad

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR  
ORAL ORDER**

18    28-08-2023                      Heard the parties.

2. The present application has been filed on behalf of the petitioners for quashing / set-aside the order dated 02.04.2018 passed by learned Sub-Judge XIII, Bhagalpur vide Title Suit No. 677 of 2013 by which petition under Order VIII Rule 6(A) of C.P.C. dated 22.12.2016 of defendants with prayer permission to file counter claim was rejected.

3. Initially, the petitioners had filed Title Suit No. 97 of 2009 for declaration of title and recovery of possession over the suit land. During pendency of the Title Suit No. 97 of 2009 the petitioner/s got a notice from the Court of Sub-Judge XIII,



Bhagalpur and came to know that Title Suit No. 677 of 2013 has been filed by Gurudeo Pandit and others including Lakshman Pandit being a plaintiff against the petitioner/s praying to hold and declare that the survey entry in the name of Parvati Devi and the mother of the defendants is wrong and is not binding upon the plaintiffs and others for the same land which is in question in Title Suit No. 97 of 2009.

4. The petitioner/s thereafter, having come to know about the Title Suit No. 677 of 2013 prayed for withdrawal of Title Suit No. 97 of 2009 with liberty to raise their grievances in Title Suit No. 677 of 2013 by way of counter claim or by any other means.

5. The withdrawal application filed in Title Suit No. 97 of 2009 was allowed on 22.07.2015 and the learned Sub-Judge in his order dated 22.07.2015 has stated that the liberty which was asked by the petitioner/s for filing counter claim or for raising their grievances by any other means was not granted to the petitioner/s as the same is not permitted under order 23 Rule 01 C.P.C.

6. The petitioner/s in the present Suit i.e. Title Suit No. 677 of 2013 filed his written statement and thereafter filed his application on 23.12.2016 under Order 08 Rule 06 (A) of



the C.P.C. and filed his counter claim.

7. The Sub-Judge XIII, rejected the prayer of counter claim with regard to the defendant i.e. the petitioner/s herein on the sole ground that the earlier suit was permitted to be withdrawn by the petitioner/s but the liberty sought by him for filing a fresh claim in accordance with law or for filing the counter claim was not allowed by the subordinate judge who had allowed the withdrawal of Title Suit No. 97 of 2009.

8. It has been submitted by the petitioner/s that the counter claim should have been admitted in the interest of justice to avoid multiplicity of Suit and Order 23 Rule 01 C.P.C. does not debar the petitioner/s from filing any counter claim in the present Suit. Learned counsel for the petitioner/s has also relied upon the judgment of the Hon'ble Supreme Court in the case of *Ashok Kumar Kalra Vs. Wing Commander Surendra Agnihotri and Others (2020) 2 SCC 394*. and has submitted that the Court should have adopted a balanced approach keeping in mind the object behind the amendment and to subserve the ends of justice. The trial Court has to exercise its discretion judiciously and come to a definite conclusion that by allowing the counter claim, no prejudice is caused to the opposite party.

9. Learned counsel for the plaintiff has submitted that



the Trial Court has rightly dismissed the application of the petitioner and has rejected the counter claim of the petitioner/s as there was no liberty granted to the petitioner/s at the time of withdrawal of Title Suit No. 97 of 2009 for filing counter claim.

10. I have heard and considered the submissions of the parties.

11. When two suits for the same relief were filed, the petitioner/s, to avoid multiplicity of proceeding had withdrawn the Title Suit No. 97 of 2009 and was given liberty to appear in the subsequent i.e. Title Suit No. 677 of 2013 and he has also filed counter claim.

12. The filing of counter claim in the Title Suit No. 677 of 2013 is a right available to the petitioner/s and the petitioner/s cannot be stopped from exercising his right merely because of the fact that the petitioner/s has withdrawn Title Suit No. 97 of 2009.

13. The Hon'ble Supreme Court, in the case of ***Ashok Kumar Kalra Vs. Wing Commander Surendra Agnihotri and Others (supra)*** after discussing the provisions of Order 08 Rule 6(A) has held as follows:-

**10.** *Order VIII Rule 6A, which pertains to the counter-claim, reads as under:-*

*Order VIII Rule 6A:*



**“6-A. 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.*

*(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.*

*(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.*

*(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.”*

**11.** *Thus, as per Order VIII Rule 6 CPC, the defendant can claim set-off of any ascertained sum of money legally recoverable by him from the plaintiff, against the plaintiff's demand, in a suit for recovery of money. Whereas, Rule 6A deals with counter-claim by defendant, according to which 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 filing of the suit but before the defendant has delivered his defence or before the time prescribed for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.*

**12.** *The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints. Order VIII Rule 6-G says that the rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim. As per Rule 8, any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off or*



*counter-claim may be raised by the defendant or plaintiff, as the case may be, in his written statement. Rule 9 of Order VIII prohibits presentation of pleadings subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim, except by the leave of the Court, and upon such terms as the Court thinks fit; and the provision further stipulates that the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same. This amendment with respect to subsequent pleadings was made to the CPC by way of Act 22 of 2002. At the cost of repetition, we may note the conditions for filing a counter-claim under Order VIII Rule 6-A:*

*(i) Counter-claim can be for claim of damages or otherwise.*

*(ii) Counter-claim should relate to the cause of action, which may accrue before or even after filing the suit.*

*(iii) If the cause of action in the counter-claim relates to one accrued after filing of suit, it should be one accruing before filing of the written statement or the time given for the same.*

*When we look at the whole scheme of Order VIII CPC, it unequivocally points out at the legislative intent to advance the cause of justice by placing embargo on the belated filing of written statement, set-off and counter-claim.*

**13.** *We have to take note of the fact that Rule 6A was introduced in the CPC by [the Code of Civil Procedure \(Amendment\) Act](#) of 1976 (Act No.104 of 1976), and before the amendment, except in money suits, counter-claim or set-off could not be pleaded in other suits. As per the recommendation of the Law Commission of India, to avoid multiplicity of proceedings, the counter-claim by way of Rule 6A was inserted in the Civil Procedure Code. The statement of objects and reasons for enacting [the Code of Civil Procedure \(Amendment\) Act](#), 1976 (Act No.104 of 1976), were-*

*1) A litigant should get a fair trial in accordance with the accepted principles of natural justice.*

*2) Every effort should be made to expedite the disposal of*



*civil suits and proceedings, so that justice may not be delayed;*

*3) The procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases.*

*14. Before we proceed further, we deem it appropriate to note that any provision under the procedural law should not be construed in such a way that it would leave the Court helpless [refer to Salem Advocate Bar Association Case (supra)]. In fact a wide discretion has been given to the civil court regarding the procedural elements of a suit. As held by this Court, procedural law is not to be a tyrant but a servant, not an obstruction but an aid to justice.*

*15. Now we need to observe certain earlier judgments of this Court which have dealt with Order VIII Rule 6-A. In [Mahendra Kumar and Anr. v. State Of Madhya Pradesh and Ors.](#), (1987) 3 SCC 265 [hereinafter referred to as 'Mahendra Kumar Case'], where the appeals were preferred against concurrent findings of the Courts below in dismissing the counter-claim as barred under [Section 14](#) of the Indian Treasure Trove Act, 1878, this Court, while considering the scope of Rule 6A(1) of Order VIII of the CPC, has held that on the face of it, Rule 6A(1) does not bar the filing of a counter-claim by the defendant after he had filed the written statement. As the cause of action for the counter-claim had arisen before the filing of the written statement, the counter-claim was held to be maintainable. This Court further observed that under [Article 113](#) of the [Limitation Act](#), 1963, the period of limitation is three years from the date of the right to sue accrues, when the period of limitation is not provided elsewhere in the Schedule. As the counter-claim was filed within three years from the date of accrual of the right to sue, this Court held that the learned District Judge and the High Court were wrong in dismissing the counter-claim. The issue concerning applicability of limitation period for filing the counter-claim was also discussed in [Jag Mohan Chawla And Another v. Dera Radha Swami Satsang & Ors.](#), (1996) 4 SCC 699 and [Shanti Rani Das Dewanjee \(Smt.\) v. Dinesh Chandra Day \(Dead\)](#) by LRs., (1997) 8 SCC 174.*

*16. In the case of [Vijay Prakash Jarath v. Tej Prakash Jarath](#),*



(2016) 11 SCC 800, this Court directed the Court below to entertain the counter-claim which was filed 2½ years after framing of issues, as the evidence was still pending and this Court felt that no prejudice would be caused to the plaintiff. However, in the case of *Bollepanda P. Poonacha & Anr. v. K.M. Madapa*, (2008) 13 SCC 179 [hereinafter referred as 'Bollepanda Poonacha Case'], this Court while referring to *Ramesh Chand Ardawatiya v. Anil Panjwani*, (2003) 7 SCC 350, discouraged the belated filing of counter-claims. Further, the Court elucidated on the serious harm caused by allowing such delayed filing. In any case, in *Bollepanda Poonacha Case* (supra), the Court could not expound any further as the counter-claim was rejected on the basis that the cause of action had arisen after the filing of the written statement.

17. The time limitation for filing of the counter-claim, is not explicitly provided by the Legislature, rather only limitation as to the accrual of the cause of action is provided. As noted in the above precedents, further complications stem from the fact that there is a possibility of amending the written statement. However, we can state that the right to file a counter-claim in a suit is explicitly limited by the embargo provided for the accrual of the cause of action under Order VIII Rule 6A. Having said so, this does not mean that counter-claim can be filed at any time after filing of the written statement. As counter-claim is treated to be plaint, generally it needs to first of all be compliant with the limitation provided under the *Limitation Act*, 1963 as the time-barred suits cannot be entertained under the guise of the counter-claim just because of the fact that the cause of action arose as per the parameters of Order VIII Rule 6-A.

18. As discussed by us in the preceding paragraphs, the whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6A in Order VIII of the CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filing of the counter-claim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and ultimately it leads



*to flagrant miscarriage of justice. At the same time, there cannot be a rigid and hyper-technical approach that the provision stipulates that the counter-claim has to be filed along with the written statement and beyond that, the Court has no power. The Courts, taking into consideration the reasons stated in support of the counter-claim, should adopt a balanced approach keeping in mind the object behind the amendment and to sub-serve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counter-claim has to be filed, by curtailing the discretion conferred on the Courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counter-claim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be permitted to file counter-claim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to the CPC.*

*19. In this regard having clarified the law, we may note that the Mahendra Kumar Case (supra) needs to be understood and restricted to the facts of that case. We may note that even if a counter-claim is filed within the limitation period, the trial court has to exercise its discretion to balance between the right to speedy trial and right to file counter-claim, so that the substantive justice is not defeated. The discretion vested with the trial court to ascertain the maintainability of the counter-claim is limited by various considerations based on facts and circumstances of each case. We may point out that there cannot be a straitjacket formula, rather there are numerous factors which needs to be taken into consideration before admitting counter-claim.*

*20. We may note that any contrary interpretation would lead to unnecessary curtailment of the right of a defendant to file counter-claim. This Court needs to recognize the practical difficulties faced by the litigants across the country. Attaining the laudable goal of speedy justice itself cannot be the only end, rather effective justice wherein*



*adequate opportunity is provided to all the parties, need to be recognized as well (refer to Salem Advocate Bar Association Case).*

14. The counter claim of the petitioner/s cannot be rejected merely because of the fact that the Title Suit No. 97 of 2009 was permitted to be withdrawn but no liberty was granted to the petitioner/s for preferring the counter claim and this Court is also of the view that substantial right of the petitioner/s available to him should not be denied.

15. In view of the law laid down by Hon'ble Supreme Court in the case of ***Ashok Kumar Kalra Vs. Wing Commander Surendra Agnihotri and Others (supra)*** , this Court is of the view that the counter claim of the petitioner/s ought to have been accepted and the impugned order passed by the trial Court cannot be sustained.

16. Accordingly, the order dated 02.04.2018 passed by learned Sub-Judge XIII, Bhagalpur vide Title Suit No. 677 of 2013 is hereby quashed in the interest of Justice.

**(Sandeep Kumar, J)**

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