

02.08.2023
Sl. No.11(DL)
srm

C.O. No. 1062 of 2023

Joydeb Paul

Versus

Biva Das & Ors.

Mr. Kishore Mukherjee,
Mr. Soumyajit Mukherjee

...for the Petitioner.

Mr. Lal Mohan Hazra,
Mr. Somesh Panja,
Mrs. Anuradha Hazra,
Mrs. Mautusi Hazra

...for the Opposite Parties.

The revisional application has been filed challenging an order dated January 13, 2023 passed in Ejectment Suit No.18 of 2018, which is pending before the learned Civil Judge (Senior Division), Sealdah, South 24-Parganas.

The learned court below refused to accept the counter-claim, which was filed by the petitioner on March 28, 2019. The petitioner is the defendant/tenant in the suit for eviction. By way of a counter-claim, the petitioner prayed for a decree of specific performance of a registered deed of conveyance along with other reliefs. On January 13, 2023, the said counter-claim was taken up for passing necessary orders with regard to the acceptance thereof. The record reveals that the counter-claim

was filed on March 28, 2019 along with the written statement. An order to that effect has been recorded. The learned court below took up the said application and rejected the counter-claim without trial and upon holding that the counter-claim should have been filed either before the written statement or within the period when the time to file written statement expired.

First of all, such findings are contrary to the records. Secondly, counter-claim can be filed at any stage prior to commencement of the trial. There is no limitation with regard to filing of the counter-claim. It has been settled by a catena of decisions that the counter-claim should be filed before trial commences.

Reference is made to the decision of *Mahesh Govindji Trivedi vs. Bakul Maganlal Vyas & Ors.* decided in *Civil Appeal No.- 7203 of 2022*. The Hon'ble Apex Court held as follows:-

“13. In Ashok Kumar Kalra (supra), the 3-Judge Bench of this Court essentially considered the question on reference as to whether it is mandatory for a counter-claim of the defendant to be filed along with the written statement. While answering this question, this Court underscored the basic principles that procedural law should not be construed in such a way that it would leave court helpless; and that a wide discretion had been given to the Civil Court regarding the procedural elements of a suit. Having said so, this Court observed that a counter-claim is designed to avoid multiplicity of proceedings; that time limit for filing a counter-claim is

not explicitly provided for but there is limitation as to the accrual of the cause of action. However, the majority opinion has been that the defendant cannot be permitted to file counter-claim after the issues are framed and the suit has proceeded substantially. It was observed and held in the lead judgment, inter alia, as under: -

‘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 6-A in Order 8 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 counterclaim, 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 counterclaim 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 counterclaim, should adopt a balanced approach keeping in mind the object behind the amendment and to subserve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counterclaim 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 counterclaim, 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 counterclaim 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 CPC.”

In the matter of *Ashok Kumar Kalra vs. Wing Cdr. Surendra Agnihotri & Ors.* reported in (2020) 2 SCC 394, one of the Hon'ble Judges of the bench held that though the normal rule was that subsequent to filing of written statement, counter-claim could not be filed after issues have been framed, but under exceptional circumstances, counter-claim could be permitted to be filed even after issues had been framed, but before commencement of recording of plaintiff's evidence. The Hon'ble Judge observed, inter alia, as follows:-

"25. Having considered the previous judgments of this Court on counterclaims, the language employed in the rules related thereto, as well as the intention of the Legislature, I conclude that it is not mandatory for a counterclaim to be filed along with the written statement. The Court, in its discretion, may allow a counterclaim to be filed after the filing of the written statement, in view of the considerations mentioned in the preceding paragraph. However, propriety requires that such discretion should ordinarily be exercised to allow the filing of a counter claim till the framing of issues for trial. To this extent, I concur with the conclusion reached by my learned Brothers. However, for the reasons stated above, I am of the view that in exceptional circumstances, a counterclaim may be permitted to be filed after a written statement till the stage of commencement of recording of the evidence on behalf of the plaintiff."

Under such circumstances, the learned court below did not have any occasion to pass the order impugned by taking out the counter-claim deciding the same as merits without any trial and in rejecting the same before the suit was decided finally.

The plaint case and the counter-claim shall be decided together at the trial upon evidence.

The order impugned is set aside.

The counter-claim which is already on record shall be accepted and the suit shall proceed for final hearing. All parties to prove their individual cases at the trial.

The trial of the suit is expedited and it is directed the same shall be concluded within four months from the next date fixed.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)