

C.O. 3183 of 2014

In the matter of : Biju Ghosh

Ms. Madhumita Patra ... for the petitioner

Mr. Probal Kumar Mukherjee, Sr. Adv.
Mr. Suhrid Sur ... for Opposite Parties

1. Heard Ms. Madhumita Patra, learned counsel appearing on behalf of the petitioner and Mr. Probal Kumar Mukherjee, learned senior counsel for the opposite parties.
2. It is submitted by Mr. Mukherjee, that the purpose of introducing Rule 6A in Order 8 of the Code of Civil Procedure is to avoid multiplicity of proceedings by drawing the parties to file separate suit and see that the dispute between the parties is decided finally. It is for the learned Trial Court to take a balanced approach keeping in mind the purpose behind the amendment while considering the delayed filing of counterclaim.
3. Hon'ble Supreme Court in ***Ashok Kumar Kalra Vs. Wing CDR. Surendra Agnihotri and Others*** reported in ***(2020)2 SCC 394*** held the following:-

“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.”

4. From the order impugned, I find that such counter-claim was allowed after the witness action started. Therefore, the order impugned cannot be allowed to remain in force and should be set aside, which I accordingly do.
5. Consequently the revisional application is allowed. The impugned order is set aside.
6. Let a copy of the judgment be sent down to the learned Trial Court for information and necessary action.
7. Parties may act upon the server copy of the order.
8. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury, J.)