

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO.01/2018

Umesh S/o Laxmanrao Churad

...Versus...

Arvind S/o Parasramji Virulkar and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri A.V. Bhide, Advocate for applicant
Shri S.V. Deshmukh, Advocate for respondent no.1

CORAM : AVINASH G. GHAROTE, J.

DATE : 09/06/2023

1. Heard Shri Bhide, learned counsel for the applicant and Shri Deshmukh, learned counsel for the respondent no.1.

2. The revision already stands dismissed as against the respondent nos.3 to 4, who are the original defendant nos.2 to 4 in the suit. In a suit filed by the applicant, namely, Regular Civil Suit No.88/2012 (Old Special Civil Suit No. No.919/2008) the present respondent no.1/defendant no.1 had filed a counter-claim against the applicant/plaintiff. When an objection was raised regarding the valuation, by an order dated 26/09/2011 (pg.33) the learned Trial Court came to the conclusion that from the perusal of the counter-claim it did not

appear that the plaintiff in the counter-claim (defendant no.1) had stated necessary facts as regards to the valuation to the counter-claim and therefore, directed him to state them and if necessary to revalue the counter-claim properly and to pay the proper court fee thereon within 15 days. Though it was directed that the same was to be done within a period of 15 days, the order-sheet which had been tendered across the bar indicates that the next date fixed was 04/11/2011 on which date the respondent no.1 herein filed a pursis (pg.34) indicating valuation of the claim in the counter-claim at Rs.1,10,000/- and a deposit of additional court fee of Rs.1260/- along with the pursis bringing the total court fee paid to Rs.1464/-. On 04/11/2011, itself though the learned Trial Court perused the pursis, however, without considering its contents it proceeded to reject the counter claim under Order 7 Rule 11 (b) and (c) of the Code of Civil Procedure ("CPC" for short hereinafter) [pg.35]. Thereafter, on 19/12/2016 an application came to be filed under Section 148 r/w Section 149 of the CPC by the respondent no.1 seeking to set aside the order dated 04/11/2011 rejecting the counter-claim (pg.36) which has been allowed by the impugned order dated 27/06/2017 (24/07/2017) [pg.41] which is the subject matter of the present revision.

3. Mr. Bhide, learned counsel for the applicant submits that the order dated 04/11/2011 rejecting the plaint was an appealable order and therefore application under

Section 148 r/w 149 of the CPC was not maintainable. He also contends that there was a huge delay of nearly 5 years in filing the application which also would be a ground to reject the same.

4. Mr. Deshmukh, learned counsel for the respondent no.1 who is the contesting respondent/original defendant no.1 by relying upon *Maharashtra State Electricity Board Vs. Niranjan Alloys Steels Pvt. Ltd, Aurangabad 2007 (2) Mh.L.J. 229* and *Mohd. Haroon s/o Mohd. Haneef and another Vs. Mohd. Yunus s/o Mohd. Haneef and others 2018 (1) Mh.L.J. 568* submits that merely because the order dated 04/11/2011 rejecting the plaint was appealable that did not prevent the Court from exercising jurisdiction under Section 148 or for that matter under Section 151 of the CPC to correct what was palpably an incorrect order. He further relies upon *D.V. Paul Vs. Manisha Lalwani (2010) 8 SCC 546* (para 31) to contend that the power to extend time, was inherent in the Court in order to do full justice to the parties and could not be taken away by imposing any limit on its exercise.

5. The factual position above would demonstrate that in pursuance to the order dated 26/09/2011 the respondent no.1/defendant no.1 by the pursis dated 04/11/2011 had indeed valued the claim in the counter-claim at Rs.1,10,000/- and had also paid the appropriate court fee. This having been done, the direction as contained in the order dated 26/09/2011 clearly stood complied with. The learned Trial Court

having noticed this position, could not have rejected the plaint under Order 7 Rule 11 (b) and (c) of the CPC without having rendered a finding that the valuation or for that matter the court fee as paid was incorrect on account of which there was non-compliance of the order dated 26/09/2011. The order dated 04/11/2011 merely rejects the claim on account of non-compliance of the order dated 26/09/2011 without any reason whatsoever, which was necessary in view of the pursis dated 04/11/2011. Thus, on the face of it, the order dated 04/11/2011 rejecting the counter-claim is clearly beyond the parameters of Order 7 Rule 11 (b) and (c) of the CPC. It is therefore apparent that though the court fee stood paid the order passed by the Court has resulted in the rejection of the counter-claim, which, in fact can be clearly termed as an error on the part of the Court.

6. In that view of the matter, though the application dated 19/12/2016 was claimed to be one under Section 148 and 149 of the CPC for restoration of the counter-claim, mere incorrect nomenclature, could not prevent the Court from exercising its inherent powers in order to correct a situation, which had occurred on account of the order of the Court dated 04/11/2011. This view is clearly held in ***Niranjan Alloys Steels Pvt. Ltd.*** as well as ***Mohd. Haroon s/o Mohd. Haneef*** (supra). Any amount of delay ought not to and would not come in the way of correcting a situation, which is detriment to the defendant no.1/respondent no.1 on account of incorrect order

passed by the Court. In that view of the matter, I do not see any reason to interfere in the impugned order. The civil revision application is therefore without any merit and the same is dismissed. In the circumstances, the learned Trial Court shall endeavour to decide the suit as expeditiously as possible. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar