



A.No.2884 of 2023
in C.S.No.770 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	22.06.2023
<i>Pronounced on</i>	25.07.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.No.2884 of 2023
in C.S.No.770 of 2016

N.Amirthalingam

... Applicant

vs.

1. M/s.Taurus GKK Leathers Pvt. Ltd.
A private Limited Company having
Registered office at No.40/7 Ramakrishna Street,
T.Nagar, Chennai – 600 017.
Rep. by its Director M.S.G.Bhuvan Kumar
2. M/s.GKK Exports Pvt. Ltd.,
A private Limited Company having
Registered office at No.40/7 Ramakrishna Street,
T.Nagar, Chennai – 600 017.
Rep. by its Director M.S.G.Bhuvan Kumar
3. M.S.G.Bhuvan Kumar
Partner, M/s. M.G.M.Exports,
No..40/7 Ramakrishna Street,
T.Nagar, Chennai – 600 017.
4. G.Mallika
5. M.S.G.Bhuvan kumar
6. Manju Chamundeshwari



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7. Veena Kishore
8. G.K.Kiran Aditya
9. G.K.Nandhitha

...Respondents in all applications

Application is filed under Order XIV Rule 8 of Original Side Rules read with Order VI Rule 17 of the Civil Procedure Code, 1908, to allow the defendant to carry out the proposed amendments in his written statement for raising his counterclaim.

For Applicant : Mr.Gowwtham Thelak V B
For Respondents : Mr.D.Ferdinand
for M/s.BFS Legal

COMMON ORDER

This application has been filed to carry out the proposed amendment in the written statement filed by the applicant / defendant and to raise his counter claim.

2. The learned counsel for the applicant / defendant submitted that the respondent / plaintiffs have filed a suit for recovery of money to the tune of Rs.1,10,00,000/- along with interest @ 18% per annum; the respondents / plaintiffs have admitted that they have entered into a sale agreement dated 02.02.2012 with the applicant / defendant for selling an immovable



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property and received Rs.1,00,00,000/- as advance; in the written statement, the applicant made it clear that it is the respondents / plaintiffs who owe money to him and he did not owe any money to the respondents; the respondents have received money from the applicant as advance and hand loans for a sum of Rs.5,71,00,000/- and this Court vide its order dated 09.03.2021 has framed the following issue to that effect:

“ Whether it is true that the defendant already parted with the money to the plaintiffs to the tune of Rs.5,71,00,000/-? ”

It is further submitted that the applicant had omitted to seek a formal counterclaim basing on the written statement.

2.1. Reliance on the side of the applicant was placed on ***Ashok Kumar Kalra Vs. Wing CDR.Surendra Agnihotri and others*** reported in ***2020 1 SCC (Civ) 545*** in which it is held that a counterclaim can be permitted to be filed after framing issues and before recording the plaintiff's evidence; hence the respondents / plaintiffs have to suitably amend the written statement for making their counterclaim.

3. The learned counsel for the respondents / plaintiffs submitted that the application has been filed after the commencement of the trial and the



alleged counterclaim itself is barred by limitation; the reason set out by the applicant for amendment is also not sustainable; instead of continuing the trial, the applicant / defendant has filed this application with some *malafide* intention; as per the Proviso to Order VI Rule 17 CPC there cannot be any amendment to pleadings after the commencement of trial unless it is shown that despite of due diligence, the party could not raise the matter before the commencement of trial; the proposed amendment sought to be made by the applicant / defendant has a scope to alter the nature of the suit and defense taken by him; the counterclaim ought to have been made within a period of three years from the date of cause of action of the alleged claim.

3.1 The learned counsel for the respondent relied on the judgment of the Hon'ble Supreme Court held in the case of ***Revajeetu Builders and Developers Vs. Narayanaswamy and sons and others*** reported in **[2009] 10 SCC 84** and submitted that as a general rule the Court, should decline the amendments if the amended claim is barred by limitation on the date of the application; the amendment sought by the applicant changes the fundamental nature and the character of the suit and the counterclaims would be barred by limitation; since the suit was filed in the year 2016



after three years from the date of disbursal of the alleged loans and hence it is barred by limitation.

4. The primary objection raised by the respondents / plaintiffs is that the counterclaim itself is barred by limitation and the permission sought to permit the applicant / defendant to carry out amendment for seeking counterclaim after the commencement of trial is not permissible in law. In the judgment of the Hon'ble Supreme Court in ***Revajeetu Builders's case (cited supra)***, it is held that following factor should be taken into consideration while dealing with the applications for amendments:

“ ... 16. According to the appellant, the amendment under Order 6 Rule 17 is consequent to the subsequent Urban Land (Ceiling and Regulation) Repeal Act, 1999 which validated all exemption orders notwithstanding any court orders, judgments or decrees to the contrary. The appellant also submitted that the amendment is necessary to elucidate the real points in controversy. It was also submitted by the appellant that the amendments will not cause any prejudice to the respondents. It was also submitted that the stand taken by the respondents is totally dishonest, wrong and not bona fide. The appellant submitted that the Court should be liberal in allowing amendments and the respondents be compensated by costs.”

5. However, the learned counsel for the applicant / defendant



submitted that even though it is a general rule that the counterclaim should be filed at the time of filing written statement, there is no bar to raise it at any time later. In the judgment of the Hon'ble Supreme Court in **Ashok Kumar** (*cited supra*) it is held as under:

“ 8. Having observed on nuances of procedural justice, we need to turn our attention to the Order 8 of the CPC, which deals with written statement, set-off and counterclaim. Rules 1 to 5 of Order 8 CPC deal with the written statement. This Order dealing with the written statement was amended extensively by the Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002), whereby the defendant shall, within thirty days from the date of service of summon on him, present a written statement of his defence. In case he fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

6. In the instant case, after the written statement was filed, issues were framed and trial has also been commenced. One of the issues appears to have been framed as under:

“ Whether it is true that the defendant already parted with money to the plaintiffs to the tune of Rs.5,71,00,000/-? ”

7. Even without the applicant / defendant filing a counterclaim, there is an issue, which throws the burden upon him with regard to the above said sum of Rs.5,71,00,000/-. Even in the counterclaim now raised by the applicant / defendant by way of amendment, the very same claim is made



along with interest. But allowing the amendment to make a counterclaim itself will not discharge the defendant from proving whether his claim is within limitation.

8. Since the parties are already facing trial, I feel that the issue whether the counterclaim is within limitation can be raised during trial. In the written statement filed by the applicant / defendant he had stated about the various payments made by him to the respondents / plaintiffs. An additional issue on the point of limitation after allowing the present amendment can be made and after the reply statement is filed.

9. Since the parties are facing trial and the transactions mentioned by the applicant / defendant already forms part of his written statement, no prejudice will be caused to the respondents / plaintiffs if the amendment is allowed. Since the issue of limitation is a mixed question of fact, it will be ideal for the parties to continue trial after having got the issue framed on this aspect.

10. With these observations this application is allowed.



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Index:Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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