

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA-4738-2019 (O&M)

Date of Decision: 19.10.2023

M/s Chaudhary Chemical Industries

....Appellant

VERSUS

M/s National Fertilizers Limited

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Vijay Lath, Advocate,
for the appellant.

KARAMJIT SINGH, J.

This appeal has been filed by the appellant/counter claimant against the judgment dated 26.3.2014 passed by the Court of Additional Civil Judge, Senior Division, Anandpur Sahib whereby the counter claim filed by the appellant for recovery of ₹ 3,49,924.80 as principal amount along with interest was dismissed and judgment dated 29.9.2018 whereby the appeal filed by the appellant against the aforesaid judgment of the learned trial Court was also dismissed by the Court of Additional District Judge, Rupnagar.

2. Brief facts of the case are that respondent-M/s National Fertilizers Limited filed Civil Suit No.182 dated 3.6.1986 for recovery of ₹ 46,424.43 along with interest and another Civil Suit No.183 dated 3.6.1986 for recovery of ₹ 17,773.80 along with interest against the appellant/counter claimant with regard to purchase of Nitric Acid by the appellant from the respondent. Both the said suits were contested by the appellant and during the pendency of the said civil suits, the appellant filed counter claim in Civil Suit No.182 of 1986 whereby it raised claim of ₹ 3,49,924.80 against the

respondent.

3. The counter claim was contested by the respondent who filed written statement to the same.

4. On the pleadings of the parties, the following issues were framed in Civil Suit No.182: -

1. Whether the plaintiff is entitled to recover ₹ 46,424.43? OPP
2. Whether the plaintiff is entitled to interest, if yes, at what rate? OPP
3. Whether this Court has no jurisdiction to entertain and try the present suit? OPD
4. Whether the suit is bad for non-joinder of necessary party? OPD
5. Whether the defendants are entitled to recovery of ₹3,49,924.80 by way of counter claim? OPD
6. Whether the defendants are entitled to interest, if yes, at what rate by way of counter claim? OPD
7. Whether the counter claim is within limitation? OPD
8. Whether the counter claim is not maintainable? OPD
9. Whether the defendant firm is duly registered with Registrar of Firms? OPD
10. Relief.

5. Following issues were framed in Civil Suit No.183 :

1. Whether the plaintiff is entitled to recover ₹ 17,773.80? OPP
2. whether the plaintiff is entitled to interest, if yes, at what rate? OPP
3. Whether this Court has no jurisdiction to entertain and try the

present suit? OPD

4. Whether this suit is within time? OPP

5. relief.

6. The respondent/plaintiff examined PW1-Raj Kumar, Deputy Company Secretary, NFL, PW2-Rajiv Kumar Sharma, Deputy Manager (Marketing) NFL, PW3-J.P.Sharma Supervisor (Accounts) NFL and PW4-Y.P.Bhola, Chief Manager (F&A), NFL.

7. On the other hand, to rebut the case of the respondent-plaintiff and to prove their own case, the appellant/counter claimant examined DW1-Meena Chaudhary Sharma, DW2-Ram Shankar, Accountant and DW3-Naresh lal Chaudhary.

8. After hearing counsel for both the parties, learned trial Court dismissed Civil Suit No.182 and 183 and also dismissed the counter claim filed by the appellant vide judgment dated 26.3.2014.

9. Being aggrieved, both the parties filed separate appeals and the said appeals were dismissed by the first appellate Court vide common judgment dated 29.9.2018.

10. The appellant being not satisfied has filed the present appeal.

11. I have heard counsel for the appellant.

12. Counsel for the appellant, while assailing the impugned judgment, has *inter alia* contended that the counter claim filed by the appellant deserves to be allowed on the basis of the evidence which is available on record of the learned trial Court. He further submits that the Courts below dismissed the counter claim of the appellant on the ground that the same was time barred. He further contends that the counter claim was filed by the appellant within a reasonable time and thus, cannot be said

to be time barred. So, prayer is made that the appeal be allowed.

13. I have considered the submissions made by the counsel for the appellant.

14. Admittedly, Civil Suits No.182 and 183 were filed by the respondent on 3.6.1986 and thereafter, the appellant filed written statement to both the said civil suits contesting the claim of the respondent. Subsequently, the appellant filed the counter claim on 25.11.1998 i.e. after more than 12 years of the filing of the aforesaid suits. By way of counter claim, the appellant sought to recover the amount of 3,49,924.80 along with interest from the respondent. Undoubtedly, the counter claim is to be treated as a plaint. The limitation period for filing any such suit for recovery is 3 years from the date of cause of action.

15. Hon'ble Supreme Court in SLP (C) No.23599 of 2018; **Ashok Kumar Kalra v. Surendra Agnihotri**, decided on 19.11.2019 observed as follows : -

“We sum up our findings that Order VIII Rule 6A of CPC does not put an embargo on filing the counter claim after filing the written statement. Rather the restriction is only with respect to accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file counter claim with substantive delay, even if limitation period prescribed has not elapsed. The Court has to take into consideration the outer limit for filing the counter claim which is pegged till the issues are framed.”

15. Now advertng to the facts of the present case, inordinate delay of more than 10 years in filing the counter claim is inexplicable in the light

of ratio laid down by Hon'ble Apex Court in **Ashok Kumar's** case (supra). So, the finding recorded by the learned trial Court as well as the first Appellate Court that the counter clam filed by the appellant was clearly time barred is factually and legally correct and does not require any interference in the second appeal. No question of law muchless substantial question of law arises for consideration by this Court.

16. Consequently, the appeal stands dismissed.

(**KARAMJIT SINGH**)
JUDGE

October 19, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No