

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. 640 of 2024

Kuheli Dutta.
Vs.
M/s. Priscon India Pvt. Ltd.

For the petitioner : Mr. Bijoy Adhikary,
Mr. Supriyo Ghosh,
Ms. Susmita Adhikary

For the opposite party : Mr. Udayan Ray,
Mr. Sukanta Mondal,
Mr. Debabrata Ray

Hearing concluded on: 07.05.2024

Judgment on: 17.05.2024

Shampa Sarkar, J.:-

1. This revisional application has been filed challenging the order dated January 18, 2024 passed by the learned Civil Judge (Junior Division), 2nd Court, Howrah. An application for amendment of the written statement filed by the petitioner/defendant in Title Suit No. 635 of 2018, was rejected by the learned Court.

2. The learned Court was of the view that the petitioner failed to show any valid reasons as to why the application for amendment of the written statement along with the counter-claim, could not have been filed earlier.

3. By the counter-claim, the defendant proposed to challenge the validity of a deed of sale dated November 6, 2017. The written statement was filed in

the year 2018. In paragraph 2 and 6 of the plaint, the plaintiff had clearly stated about the deed of sale. The deed could have been challenged earlier, as it was within the knowledge of the defendant/petitioner. The defendant had every opportunity to file the counter-claim at the proper stage. In the opinion of the learned trial court, the proposed amendment would cause delay and injustice to the opposite party.

4. Mr. Bijoy Adhikary, learned advocate appearing on behalf of the petitioner, submitted that a poor widow who was living with her children in the property in question, could not be thrown out as she had a right to claim accommodation in the said premises under the Protection of Women from Domestic Violence Act, 2005.

5. The house belonged to her mother-in-law and she was living with her mother-in-law in the shared household after the demise of her husband. The brother-in-law surreptitiously prepared/manufactured the deed of sale without the knowledge of the petitioner, with the intention to drive the petitioner and her children out of the shared household. The deed of sale did not mention the fact that the petitioner was a widow and had a right in the shared household. The property was not free from all encumbrances. Although, the property was in the name of the mother-in-law, it was a common dwelling house for all and the petitioner and her children had inherited a part of the property. Title could not have passed on the basis of the said deed.

6. Mr. Adhikary, placed the examination-in-chief and the cross-examination of the petitioner. Learned Advocate also placed the written

statement in support of his contentions. Paragraphs 9 to 14 were referred to. The petitioner had categorically stated that she was a co-sharer in the suit property. Petitioner was one of the legal heirs, being the widow of a predeceased son. That the petitioner did not know anything about the execution of the deed of sale and she categorically denied that her mother-in-law, at any point of time, had executed any sale deed in favour of the plaintiff. Thus, Mr. Adhikary contended that by the amendment the counter-claim, no new cause of action was sought to be introduced.

7. Mr. Adhikary relied on the folloas decisions:-

(a) *Prabha Tyagi vs Kamlesh Devi*, decided in *Criminal Appeal No. 511 of 2022*,

(b) *Chander Kanta Bansal vs Rajinder Singh Anand* reported in *AIR 2008 SC 2234*

8. Mr. Udayan Ray, learned advocate appearing on behalf of the opposite party, submitted that the suit for eviction of the petitioner, upon revocation of licence in respect of the suit property, was filed in 2018. The suit property belonged to late Supriti Dutta, who had transferred the same in favour of the plaintiff/opposite party by a registered deed of sale dated November 6, 2017. The sale was registered before the Additional District Sub-Registrar, Howrah and was recorded in Book No. I, Volume 502-2017, pages 201344 to 2031374. The petitioner was well known to the vendor of the plaintiff and the vendor of the plaintiff temporarily allowed the petitioner to occupy two rooms, more fully described in the schedule-B. This was a permissive possession. Licence fee was not charged. After purchase of the property, the

plaintiff asked the defendant to vacate the premises, as the licence automatically stood revoked. The petitioner requested the opposite party to allow her to occupy the B- Schedule property for three months. Out of sympathy, the opposite party allowed the petitioner to occupy the B- Schedule for a period of three months without claiming any licensee fee. Thereafter, by a letter dated April 5, 2018, the opposite party formally revoked the licence. The petitioner continued to occupy the B- Schedule property as a trespasser. Thus, that suit was filed for recovery of khas possession in respect of B- Schedule property. Mr. Ray, further submitted that, the amendment application along with the counter-claim could not be filed after the evidence had commenced. The prayer for declaration that the deed of sale dated November 6, 2017, was not available as the same was time-barred. The petitioner had knowledge of the said deed even at the time of its execution. The deed was disclosed in the plaint. The suit was filed in 2018. The application for amendment of written statement and the counterclaim was filed in April 2022 which was beyond the period of three years from knowledge of such deed.

9. Mr. Ray, further pointed out to the cross-examination of the petitioner, dated March 23, 2021. There, the petitioner had categorically deposed that the mother-in-law was the owner of the property and the mother-in-law had granted permission to the petitioner to stay in the B- Schedule property, as a licensee. It was further contented that the issues were framed on February 13, 2019. The deposition of the PW-1 commenced in August 2019 and continued till February 2021. The deposition of the DW-1/petitioner,

commenced in March 2021. Thus, under no circumstances, could the application for amendment along with the counterclaim be allowed.

10. Upon hearing the learned advocates for the respective parties, it appears that the suit for recovery of khas possession, after revocation of the licence, was filed sometime in 2018. The opposite party/plaintiff, had categorically mentioned that the plaintiff had become the owner of the property on the basis of a deed of sale, executed on November 6, 2017. The written statement does not contain any challenge to the deed of sale. The categorical averment of the petitioner was that, she was not aware of the sale. That she was a co-sharer in respect of the property in question and her mother-in-law could not have sold the same. On the date fixed for the evidence of DW-2, the petitioner filed the amendment application, along with the counter claim.

11. The written statement was filed on October 9, 2018 and the application for amendment along with the counterclaim was filed on April 22, 2022. In paragraph 5 of the application for amendment, the petitioner stated that after commencement of trial, she came across relevant documents, the contents of which were necessary to be incorporated in the written statement, for proper adjudication of the real controversy between the parties. The knowledge which the petitioner gathered after the trial had commenced, should be allowed to be incorporated in the written statement for proper adjudication of the disputes between the parties. Subsequent events were required to be brought on record. Despite exercise of due diligence, the petitioner could not mention the facts earlier. The amendment

was necessary for proper adjudication of the suit. If the amendment with the counter claim was not allowed, the same would lead to multiplicity of proceedings. There was no wilful delay or laches on the part of the petitioner in filing the said application and unless the application was allowed, the petitioner would suffer irreparable loss and injury. From the proposed amendment, it appears that the petitioner wanted to incorporate pleadings that the mother-in-law had neither signed nor executed the deed of sale dated November 6, 2017. That the sale deed was manufactured by the plaintiff in collusion with one of the sons of Supriti Dutta, namely Pulak Dutta. The sole intention of Pulak Dutta was to drive out the petitioner and her children from the dwelling house. The sale was void, illegal, mala fide, purposive, and not binding on the petitioner. Being the legally married wife of the predeceased son of Supriti Dutta, the petitioner and her children were entitled to reside in the premises and the petitioner had a legal connection to the property. The electricity bills stood in her name. Had the mother-in-law been alive, she could have denied the existence of such deed. By the counter claim, the petitioner prayed for a decree for declaration that the deed of sale dated November 6, 2017 was null, void, and not binding. A declaration that the plaintiff was not entitled to a decree for eviction, and the defendant/petitioner, as a family member was entitled to possession of the property. A declaration that the deed dated November 6, 2017 was illegal, mala fide, purposive, manufactured and not executed by Supriti Dutta. Permanent injunction restraining the plaintiff/opposite party, from disturbing the possession of the defendant in any manner whatsoever.

12. The reasons assigned by the petitioner, justifying the delay in filing the application for amendment with the counter-claim, are not credible. The amendment was not filed on the happening of a subsequent event. It is an admitted fact that the written statement was filed on October 9, 2008. In the plaint, the plaintiff had categorically mentioned about the execution of the deed. From 2018 onwards, the petitioner was aware of the said deed. In the written statement, the petitioner did not allege that the mother-in-law had not executed the deed, or that the deed was manufactured by a Pulak Dutta, in collusion with the plaintiff, only to deprive the petitioner and her children from their legitimate rights in the property in question. On the contrary, in the defence case, the petitioner had stated that she was a co- sharer in respect of the property in question, and she was unaware of any such deed. In the cross-examination, the petitioner deposed that she was a licensee and was granted permission to reside in the B schedule property, by her mother-in-law.

13. In any event, the counter-claim could not have been allowed at a belated stage. The issues were framed on February 13, 2019. Although Mr. Adhikary submits that during the COVID-19, the learned advocate could not be contacted and the petitioner could not proceed properly, but the issues had been framed a year prior to the pandemic. It also appears that the cross-examination of the petitioner started in March 2022, after the PW-1 had been discharged. The evidence of PW-1 commenced in 2019.

14. On April 22, 2022, the application was filed for amendment. Not only is the amendment hit by the proviso to Order 6 Rule 17 of the Code of Civil

Procedure. The amendment also could not be allowed because the counter-claim could not be filed after framing of issues.

15. Even assuming that the petitioner had come to know about the sale deed for the first time upon receipt of a copy of the plaint, three years from the said date ended prior to the date when the amendment application was filed. Moreover, the law has been well settled. Counter-claim can be filed anytime, but before framing of issues.

16. Counter-claim is in the nature of a plaint. Generally, it is to comply with the limitation provided under the Limitation Act, 1963. There cannot be a straightjacket formula rather, there are numerous factors which have to be seen and taken into account before accepting a belated counter-claim. Some of such factors have been illustrated in paragraph 21 of the decision in ***Ashok Kumar Kalra vs Wing Cdr. Surendra Agnihotri & Ors.*** reported in **(2020) 2 SCC 394**, namely period of delay, prescribed period of limitation, reason for the delay, defendant's assertion of his right, similarity of cause of action between the main suit and the counter-claim, cost of fresh litigation, injustice and abuse of process, prejudice to the opposite party. The relevant portions are quoted below:-

“17. The time limitation for filing of the counterclaim, is not explicitly provided by the legislature, rather only limitation as to the accrual of the cause of action is provided. As noted in the above precedents, further complications stem from the fact that there is a possibility of amending the written statement. However, we can state that the right to file a counterclaim in a suit is explicitly limited by the embargo provided for the accrual of the cause of action under Order 8 Rule 6-A. Having said so, this does not mean that counterclaim can be filed at any time after filing of the written statement. As counterclaim is

treated to be plaintiff, generally it needs to first of all be compliant with the limitation provided under the Limitation Act, 1963 as the time-barred suits cannot be entertained under the guise of the counterclaim just because of the fact that the cause of action arose as per the parameters of Order 8 Rule 6-A.

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.

19. In this regard having clarified the law, we may note that Mahendra Kumar case [Mahendra Kumar v. State of M.P., (1987) 3 SCC 265] needs to be understood and restricted to the facts of that case. We may note that even if a counterclaim is filed within the

limitation period, the trial court has to exercise its discretion to balance between the right to speedy trial and right to file counterclaim, so that the substantive justice is not defeated. The discretion vested with the trial court to ascertain the maintainability of the counterclaim is limited by various considerations based on facts and circumstances of each case. We may point out that there cannot be a straitjacket formula, rather there are numerous factors which needs to be taken into consideration before admitting a counterclaim.

20. We may note that any contrary interpretation would lead to unnecessary curtailment of the right of a defendant to file counterclaim. This Court needs to recognise the practical difficulties faced by the litigants across the country. Attaining the laudable goal of speedy justice itself cannot be the only end, rather effective justice wherein adequate opportunity is provided to all the parties, need to be recognised as well.

21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- (i) Period of delay.
- (ii) Prescribed limitation period for the cause of action pleaded.
- (iii) Reason for the delay.
- (iv) Defendant's assertion of his right.
- (v) Similarity of cause of action between the main suit and the counterclaim.
- (vi) Cost of fresh litigation.
- (vii) Injustice and abuse of process.
- (viii) Prejudice to the opposite party.
- (ix) And facts and circumstances of each case.

(x) In any case, not after framing of the issues.”

17. Justice Mohan M. Shantanagoudar, in the dissenting view in **Ashok Kalra, (Supra)**, opined that, a counterclaim could be accepted even after framing of issues, but before recording evidence, if such counterclaim would not prejudice the right of either of the parties to the suit.

18. The Hon’ble Apex Court in the matter of **Mahendra Kumar and another v. State of Madhya Pradesh and others** reported in **AIR 1987 SC 1395**, was of the view that filing of a counter-claim after the issues had been framed, could not be allowed. The proposition laid down by the Hon’ble Apex Court was that counter-claim need not be filed along with written statement, but must be filed before the issues were framed.

19. Reference is made to the decisions of **Mahesh Govindji Trivedi vs. Bakul Maganlal Vyas and Ors.** decided in **Civil Appeal No.- 7203 of 2022**. The Hon’ble Apex Court held that belated filing of a counter-claim could not be the sole ground for rejection as long as the same was filed before framing of issues. The relevant paragraph is quoted below:-

“**14.** In a conspectus of the aforesaid and while proceeding on the fundamental principles that the rules of procedure are intended to subserve the cause of justice rather than to punish the parties in conduct of their case, we are clearly of the view that the counter-claim in question could not have been removed out of consideration merely because it was presented after a long time since after filing of the written statement. Indisputably, the counter-claim was filed on 07.09.2018 and until that date, issues had not been framed in the suit. In fact, the issues were framed only on 05.12.2018, the very date on which the learned Single Judge in the first round of these proceedings took the counter-claim off the record for no permission/leave having been sought for its presentation. In appeal against the order dated 05.12.2018, the Division Bench permitted filing of the requisite application seeking permission to file the counter-claim, while taking note of the submissions of the plaintiffs respondents that they will not

raise an objection to such application on the ground that the issues had already been framed and documentary evidence had been presented; and the Division Bench expected the learned Single Judge to deal with such an application on its own merits. Pursuant to the liberty so granted by the Division Bench, the appellant moved the application seeking permission to place the counterclaim on record and in support thereof, filed a detailed affidavit stating specific reasons for which the counter-claim was sought to be filed, including that of avoiding the multiplicity of proceedings. The appellant also pointed out the fact that he was earlier engaged in the dispute concerning succession to the property, which came to be settled in his favour only in the year 2017. The learned Single Judge, while passing the order dated 02.05.2019, did not elaborate much on the other aspects but pointed out the reason for accepting the prayer of the appellant that it would avoid multiplicity of proceedings; and in all fairness to the plaintiffs respondents, kept all their defences, including as to limitation, specifically open. The said order dated 02.05.2019, even if passed by the learned Single Judge on the very first day of consideration of the application moved by the appellant, had been a just and proper order which was conducive to the proper progression of the proceedings while avoiding multiplicity of litigation. There was no justified reason for the Division Bench to have interfered with the order so passed by the learned Single Judge.

14.1. In the totality of the facts and circumstances of the present case, we are clearly of the view that neither the requirements of Order VIII Rule 6-A CPC or Rule 95 of the Rules nor the principles enunciated and explained in **Ashok Kumar Kalra (supra)** operate as a bar over the prayer of the appellant for taking the belatedly filed counter-claim on record, which was indeed filed before framing of issues.”

20. Chander Kanta (supra) it is not a case which relates to allowing a counterclaim. Moreover, it was held that if acceptable materials could be placed before the court to show that the delay was beyond the control of a diligent litigant, belated application for amendment could be allowed in spite of the proviso to Order 6 Rule 17 of the Code of Civil Procedures. In this case, the ground for the delay as pleaded by the petitioner was that the petitioner was unaware of the deed of sale. Later, after the trial had commenced, the petitioner had come to know about the sale deed and such subsequent event was required to be brought on record. Accordingly, the

prayer for cancellation of the deed was made for the ends of justice and for complete and proper adjudication of the dispute between the parties. The petitioner has failed to prove that she had no control over the situation and could not have brought this fact before the court on an earlier occasion. The plaintiff clearly disclosed the existence of the deed of sale and the manner in which the plaintiff had become owner of the property in question. These categorical contentions of the plaintiff were denied by the petitioner in the written statement, inter alia, stating that she was unaware of the sale and the sale could not take place as she was a co-sharer.

21. Nothing more than such averment is available from the written statement which was filed on October 9, 2008. After four years, the petitioner woke up from her slumber and decided to challenge the deed of sale, by incorporating a counter claim. This is not a case of due diligence and the amendment is not only hit by the proviso to Order 6 Rule 17, but also hit by the cardinal principle that counter-claim should be filed prior to framing of issue.

22. *Prabha Tyagi (supra)*, is a decision on the Domestic Violence Act. Right of a woman to a shared household has been reiterated. It is not applicable in the present case because this is a suit for recovery of possession from a trespasser, upon revocation of licence by the owner of the property. The owner of the property claims to have derived his right on the basis of a deed of sale dated November 6, 2017 entered into between him and the erstwhile owner Smt. Supriti Dutta. The petitioner had admitted that the property was in the name of Supriti Dutta.

23. Under such circumstances, the revisional application fails. The order impugned upheld.

24. There will be no order as to costs.

25. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)