

03.05.2024
Sl. No.4(DL)
srm

C.O. No. 2588 of 2023

Meheraj Mondal & ors.

Versus

Niyamat Ali Mondal & ors.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal

...for the Petitioners.

Mr. Bratin Kumar Dey,
Ms. Anjana Banerjee,
Mr. Pushan Chattopadhyay

...for the Opposite Parties.

1. The revisional application arises out of an order dated December 5, 2022 passed by the learned Civil Judge (Junior Division), 2nd Court at Krishnagar, Nadia, in Title Suit No.91 of 2019.
2. The learned court rejected a counterclaim filed by the defendants/petitioners. By the said counterclaim, the defendants wanted to introduce pleadings and prayers with regard to their share vide deed of partition No.9563 dated June 28, 1966.
3. The contention was that the petitioners, in the written statement, had failed to raise a vital claim on the basis of the said deed, as the deed was not in their custody. After obtaining the deed from the proforma defendants, the

same was shown to the learned Advocate through an intermediary and thereafter the defendants were advised to file a counterclaim by incorporating such facts and necessary prayers. The learned court rejected the counterclaim as the same was filed after the evidence commenced.

4. Mr. Roy, learned Advocate appearing on behalf of the petitioners submits that only on the ground of delay, a counterclaim could not be rejected. The learned court ought to have gone into the merits of the counterclaim and held that such aspect was vital for a decision in the suit, as the corresponding shares of the petitioners in the suit property would be available from the deed of partition.
5. Mr. Roy relied on the decision of the Hon'ble Apex Court in the matter of *Mahesh Govindjit Tridevi vs. Bakul Magnalal Vyas & Ors.* reported in *2022 SCC Online SC 1390*. The relevant paragraphs which have been strongly relied upon by Mr. Roy, are paragraphs 10 to 16.
6. Although no specific period of limitation within which a counterclaim should be filed has been prescribed, but judicial precedents have laid down that counterclaim could be filed upto the stage of framing of issues, but

could not be allowed to be filed after issues had been framed. There is no quarrel with the proposition of Mr. Roy, supported by paragraphs 10 to 16 of the decision of the Hon'ble Apex Court in the matter of *Mahesh Govindji Trivedi (supra)* that delay should not be a ground for rejection of a counterclaim and also that a counterclaim could be filed even after the filing of a written statement.

7. However, the counter-claim should not be allowed mechanically, for the mere asking. The grounds for belated filing of the same, would be relevant. Pleadings in paragraph 3 of the counterclaim is that although the partition deed through which the defendant's claim title, mentioned both suit and non-suit plots, but out of bona fide mistake the dag numbers of the suit plots were wrongly mentioned. Prima facie, this is a very desperate plea made to assert title on the basis of the said deed. Secondly, the ground of delay is that the deed was not in the custody of the petitioners and as such, such defence was not taken in the written statement.
8. On the basis of such deed, which admittedly contained incorrect dag numbers of the suit plots, a prayer was

made for declaration of the share of the petitioners. This was sought to be incorporated in the counter-claim.

9. There is no dispute with the fact that this counterclaim was filed at the stage of evidence of the PW1. There is also an admission that the dag numbers of the suit plots had been wrongly mentioned in the said deed, which was sought to be introduced in the fifth year of the suit.
10. The Hon'ble Apex Court has repeatedly laid down the law that counterclaim could not be filed after framing of issues. The cause of action is the deed of 1966 which was within the knowledge of the petitioners.
11. The principle laid down by judicial decisions is that counter-claims should be filed before issues are framed. In very exceptional situations, counter-claim can be filed after issues have been framed, but before evidence is recorded. The Courts may exercise discretion by accepting belated counter-claims in order to avoid multiplicity of proceedings and a situation of effective retrial. Such relaxation has been given on the logic that between framing of issues and recording of evidence, suits do not progress much. The object of incorporation of Order 8 Rule 6A of the Code of Civil Procedure, by the amendment Act of 1976, is to avoid multiplicity of

proceeding. Time limit for filing a counter-claim has not been explicitly provided by the legislature. Rather, limitation as to accrual of the cause of action has been provided is Order 8 Rule 6A of the Code of Civil Procedure. This does not mean that the counter-claim can be filed at any time after filing of the written statement. A counter-claim is in the nature of a plaint. Generally, it needs to comply with the limitation provided under the Limitation Act, 1963. A time barred claim cannot be entertained under the guise of a counter-claim. However, as a general rule, a defendant cannot be permitted to file a counter-claim after the issues are framed and after the suit had proceeded substantially, even in cases when the claim may not be time barred. If any belated counter-claim, without any explanation for the delay is accepted, it will defeat the cause of justice and be counter-productive.

12. Discretion is vested in the learned trial court whether to accept a belated counter-claim and also ascertain the maintainability of such counter-claim. Such discretion is limited by various considerations based on evaluation of facts and circumstances of each case. There cannot be a straitjacket 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, (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 counter-claim, (vi) cost of fresh litigation, (vii) injustice and abuse of process, (viii) prejudice to the opposite party, (ix) facts and circumstances of each case.

13. Even in *Mahesh Govindji Trivedi (supra)* the Hon'ble Apex Court held that counterclaim could not be filed after framing of issues. The relevant paragraphs are quoted below:-

"27. In *Ashok Kumar Kalra (supra)*, the 3-Judge Bench of this Court essentially considered the question on reference as to whether it is mandatory for a counter-claim of the defendant to be filed along with the written statement. While answering this question, this Court underscored the basic principles that procedural law should not be construed in such a way that it would leave court helpless; and that a wide discretion had been given to the Civil Court regarding the procedural elements of a suit. Having said so, this Court observed that a counter-claim is designed to avoid multiplicity of proceedings; that

time limit for filing a counter-claim is not explicitly provided for but there is limitation as to the accrual of the cause of action. However, the majority opinion has been that the defendant cannot be permitted to file counter-claim after the issues are framed and the suit has proceeded substantially. It was observed and held in the lead judgment, *inter alia*, as under:—

“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.

56. The above discussion lends support to the conclusion that even though Rule 6-A permits the filing of a counterclaim after the written statement, the court has the discretion to refuse such filing if it is done at a highly belated stage. However, in my considered opinion, to ensure speedy disposal of suits, propriety requires that such discretion should only be exercised till the framing of issues for trial. Allowing counterclaims beyond this stage would not only prolong the trial, but also prejudice the rights that may get vested with the plaintiff over the course of time."

14. The revisional application is, thus, dismissed.

15. This order shall not prevent the petitioners from proceedings with the cross-examination, strictly in accordance with law.

16. There shall be no order as to costs.

17. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)