

05.04.2024
Item No.16
Ct. No. 7
KS

C.O. 3554 of 2023
Dilip Kumar Ray
Vs.
Srabanti Sen & Anr.

Mr. Ankit Agarwal
Ms. Alotriya Mukherjee
Mr. Debajyoti Sengupta
.....for the Petitioner
Mr. Dhananjay Banerjee
Ms. Sangita Singh
.....for the O.P. No.1
Mr. Somnath Roy
.....for the O.P. No.2/Municipality

1. This civil order is at the instance of the plaintiff and is directed against an order No.27 dated 18th August, 2023 passed by the learned Civil Judge, (Junior Division), 1st Court, Chandannagar, District Hooghly.
2. By the order impugned, the application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the written statement for setting up a counter-claim was allowed.
3. The learned advocate appearing for the petitioner submits that the counter-claim, which the defendant seeks to introduce by way of amendment is barred by limitation and therefore, the learned Trial Judge ought not to have allowed the application for amendment.
4. Learned advocate appearing for the opposite party submits that the learned Trial Judge after relying upon a decision of the Hon'ble Supreme Court in the case of *Ashok Kumar*

Kalra Vs. Wing CDR. Surendra Agnihotri & Ors. reported at (2020) 2 SCC 394 allowed the application for amendment upon holding that the outer limit for filing counter-claim is the stage of framing of issues, which is yet to arrive.

5. Heard the learned advocates for the parties and perused the materials placed.
6. The petitioner herein filed a suit for declaration that he is a tenant under the proforma defendant no.2 that is the Chairman, Bhadreswar Municipality and for a declaration that the defendant no.1 do not have any title in respect of the suit property. The petitioner also prayed for an order of permanent injunction restraining the defendants from interfering with the peaceful possession of the petitioner in the suit property.
7. The opposite party no.1 is contesting the said suit by filing a written statement. Thereafter, the said opposite party filed an application under Order 6 Rule 17 of the Code praying for amendment of the written statement for setting up a counter-claim.
8. From the schedule of amendment of the application, it is evident that the opposite party no.1 sought for a decree of declaration that she has got tenancy right over the schedule property and that the plaintiff has got no right to possess the suit property being an illegal occupier. A decree for recovery of khas possession against the plaintiff was also prayed for in

the said application. The opposite party no.1 sought to insert paragraph 15(A) after paragraph 15 of the original written statement, which states that the cause of action for the counter-claim initially arose after filing of the suit on 25th February, 2022 and finally on 4th March, 2022. From paragraph B of the Schedule of amendment, it appears that on 25th February, 2022, the defendant along with husband went to the suit premises and asked the plaintiff to quit and vacate the schedule premises.

9. It is not in dispute that the written statement was filed on 1st April, 2021. The cause of action for the counter-claim arose on 25th February, 2022 i.e. after filing of the written statement.
10. Order 8 Rule 6A of the Code of Civil Procedure states that *“a defendant in a suit may, in addition to his right of pleading of set-off under Rule 6 set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limit for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not”*.
11. Upon a bare reading of the aforesaid provision, it is evident that the cause of action of the counter-claim has to arise before the defendant has delivered his defence or before the time limit limited for delivering his defence has expired. In

the case on hand, the cause of action for counter-claim as pleaded in the amendment application is after the filing of the written statement.

12. The Hon'ble Supreme Court in *Ashok Kumar Kalra (supra)*

held that the time limit for filing of the counter-claim is not explicitly provided by the legislature rather only limitation as to the accrual of the cause of action is provided. It was further observed that the right to file a counter-claim in a suit is explicitly limited by the embargo provided for the accrual of the cause of action under Order 8 Rule 6A. The learned Trial Judge failed to appreciate that the restriction imposed under Order 8 Rule 6A of the Code with respect to accrual of cause of action stands attracted in the instant case.

13. Therefore, the order impugned allowing the application for amendment of the written statement for setting up a counter-claim calls for interference. The Order No.27 dated 18th August, 2023 passed by the learned Civil Judge (Junior Division), 1st Court, Chandannagar, District – Hooghly is set aside.

14. With this above observation/directions, C.O. 3554 of 2023 stands allowed.

15. There shall be, however, no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)