



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 8002 OF 2023

(Vilas s/o Damodar Kuchawar Vs. Vijay s/o Damodar Kuchewar & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.P. Wachasundar, Counsel for the petitioner.
Shri P.A. Gode, Counsel for respondent no.1.

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CORAM : ANIL L. PANSARE, J.
JULY 3, 2024

The challenge is to order dated 25/9/2023 passed below Exhs. 37 and 40 by the 12th Joint Civil Judge (Sr. Dn.), Nagpur, in Special Civil Suit No. 696/2017. The petitioner – original defendant no.3 had filed application to amend the written statement and to institute counter claim for declaration.

2] Pending suit, it appears that at the instance of respondent no.1 – original plaintiff, the Survey Officer proposed to carry out measurement of the suit property on 30/1/2023. These facts were intended to be brought on record by way of amendment to written statement and by seeking declaration that the respondent has no right to disturb the possession of the petitioner.

3] The trial Court, by relying upon the judgment of the Hon'ble Supreme Court in the case of *Ashok Kumar Kalra Vs. Wing CDR. Surendra Agnihotri And Others [(2020) 2 SCC 394]*, has rejected the application on the ground that counter claim cannot be filed subsequent to framing issues.

4] Respondent no.1 had filed suit seeking declaration of ownership over the suit property and directions to the petitioner to deliver vacant possession of the suit property. The petitioner had filed written statement on 2/1/2018. Issues were framed on 4/12/2019.

5] In the case of *Ashok Kumar Kalra (supra)*, the Supreme Court summed up the scope of Order VIII Rule 6A of the Code of Civil Procedure, 1908 (CPC) in the following terms :

“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.”

As could be seen, the Supreme Court has categorically held that the outer limit for filing counter claim is till framing issues. The other Clauses refers to granting relief in cases where written statement is filed and counter claim is sought to be filed before framing issues. Clause (x) clearly shows that the counter claim cannot be filed once issues are framed.

6] The learned Counsel for the petitioner harped upon Clauses (i) to (ix) of the aforesaid judgment to contend that counter claim can be filed even after framing of issues. He submits that cause of action, to file counter claim, itself arose in January – 2023 when the petitioner received notice from the office of land records to measure the suit land, where disputed property is constructed.

7] To my mind, merely because respondent no.1 – plaintiff made an attempt to measure the suit land itself cannot be said to be an attempt to take possession of the disputed portion of the suit property, and if at all the said act is to be treated as an independent cause to file suit, the petitioner has appropriate remedy in this regard.

8] At this stage, the learned Counsel for the petitioner submits that purpose of introducing Rule 6A in Order VIII of the CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and to see that dispute between the parties is decided finally.

9] The tone of argument and the manner in which it is made is like defendants in all suits have license

to seek amendment whenever they feel like. This argument is further indicative of the fact that the Counsel for the petitioner has not meticulously gone through Ashok Kumar Kalra's case. On this point, the Supreme Court has, in paragraph 18, observed thus :

"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 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.”

10] Thus, while summarizing the position in paragraph 21, the foundation has been recorded in paragraph 18 mentioning therein that the defendants cannot be permitted to file counter claim after the issues are framed and after the suit has proceeded substantially.

11] Despite law having been crystallized in the case of *Ashok Kumar Kalra (supra)* and despite the learned Counsel for the petitioner being made aware of it, he went on making unnecessary and irrelevant submissions for no valid reason, which practice is deprecated.

12] The petition is, accordingly, dismissed with costs of Rs.1,000/- to be paid by the petitioner to the High Court Bar Association Library, Nagpur within three weeks from today, failing which the Registry shall proceed to initiate appropriate proceedings for recovery of amount.

(ANIL L. PANSARE, J.)

Sumit

Costs of Rs.10,000/- is corrected as costs of Rs.1,000/- as per Court's order dated 24/7/2024.