

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1317-2018 (O&M)

Date of Decision: March 04, 2024

Randhir Singh

...Petitioner

Versus

Jagtar Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.P.K.Garg, Advocate
for the petitioner.

Mr.Deepak Goyal, Advocate
for respondents No.1 to 4.

Ms.Shubhreet Kaur, Advocate for
Mr.V.G.Jauhan, Advocate
for respondent No.6.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 09.11.2017 (Annexure P-6), whereby, an application filed by the petitioner for filing counter claim was dismissed by learned trial Court.

The material facts, as culled out from the paperbook, are as follows:-

That, initially, plaintiffs (who are respondent No.1 to 4 in the present revision petition), had filed a suit against Karnail Singh (respondent No.5), Naib Singh (respondent No.6), Randhir Singh (petitioner of the revision petition) and Gurmail Kaur (respondent No.7), thereby, seeking declaration

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to the effect that plaintiffs and defendants are owner in possession in equal share (share of Bhag Singh Bhagwan Singh), in land total measuring 222 Kanal 14 Marla, as detailed in the headnote of the plaint, copy whereof is Annexure P-7 and further also alleged Will dated 27.07.2012 to be forged and fabricated one, which is result of fraud and also challenged the consequential mutation on the basis thereof. Besides the same, also sought relief of permanent injunction to restrain the defendants from transferring the suit land, in any manner, after entry of mutation, in their favour, on the basis of the aforesaid Will.

The said suit was filed, thereby, asserting right on the basis of natural inheritance. However, respondents made appearance. Defendant No.3-Randhir Singh (petitioner in the present revision petition), had filed written statement, whereby, while raising legal objections, on merits, had also set up a Will dated 22.03.2004 having executed by Bhag Singh @ Bhagwan Singh, regarding 3/5th share of his land, in favour of defendant No.3 i.e. present petitioner, 1/3rd share in favour of Gurmail Kaur wife of Karnail Singh-defendant No.1 and 1/3rd share, in favour of Naib Singh-defendant No.2.

During the pendency of the aforesaid suit, when the case was at the stage of recording of the plaintiffs' evidence, after examination-in-chief of PW-1, an application was filed by the petitioner (defendant No.3), thereby, seeking permission to submit counter claim. In the said application, it was averred that defendant No.3 had filed the written statement, thereby, reserving his right to submit counter claim. The counter claim is within limitation and for fair adjudication of the matter in hand, defendant No.3 be

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allowed to file the counter claim.

The claim of the petitioner was resisted in the replies filed, at the instance of the plaintiffs as well as co-defendants, whereby, it was stated that after filing of written statements on 15.01.2015 and thereafter, when the evidence of the plaintiffs had started and after 15 hearings, defendant No.3-petitioner had filed application for seeking permission to file counter claim and as such, a prayer was made for dismissal of the application.

After hearing learned counsel for the parties, vide impugned order, the application was dismissed.

Feeling aggrieved by the aforesaid order, the petitioner (defendant No.3) has filed the present revision petition.

Learned counsel for the parties heard.

At the very outset, it is pertinent to mention that suit for declaration and permanent injunction was filed by respondents No.1 to 4 (who were plaintiffs before learned trial Court) on 04.08.2014. They had asserted their right to the share of property of Bhag Singh @ Bhagwan Singh, on the basis of natural succession and challenged the Will dated 27.07.2012. In the said suit, written statement (Annexure P-1) was filed, at the instance of the petitioner (defendant No.3), reserving right to counter claim on 15.01.2015. The application in question for seeking permission to file counter claim was filed on 02.09.2016. As evident, the application under Order 39 Rule 1 and 2 CPC had already been decided, issues were framed and thereupon, evidence of plaintiffs had also begun. The examination-in-chief of PW-1 Charanjit Kaur was already recorded and when the case was fixed for remaining evidence of the plaintiffs, the application in hand was

filed, at the instance of the petitioner on 02.09.2016.

In this backdrop, at the very outset, learned counsel for the petitioner submits that the intent behind Order VIII Rule 6A of the CPC is to provide an enabling provision for the filing of counterclaim, so as to avoid multiplicity of proceedings, thereby saving the time of the Courts and avoiding inconvenience to the parties. It is submitted that there is no specific statutory bar or embargo, imposed upon the Court's jurisdiction to entertain a counter-claim, except the limitation under the said provision, which provides that the cause of action in the counter-claim, must arise either before or after the filing of the suit, but before the defendant has delivered his defence. Learned counsel relies upon *Mahender Kumar vs. State of Madhya Pradesh, 1987 (3) SCC 265* and *Vijay Prakash Jarath vs. Tej Parkash Jarath, 2016(2) Civil Court Cases 293 (SC)*, to emphasize that the counter-claim can be filed, within a period of limitation, though, it may be at belated stage. In the given circumstances, a prayer has been made for acceptance of the revision petition.

On the other hand, learned counsel making appearance on behalf of the respondents submit that since the evidence of the plaintiffs had started before learned trial Court, therefore, at this stage, counter-claim could not be filed and learned trial Court had rightly dismissed the application. Learned counsel for respondent No.6-Naib Singh submitted that in any case, the counter-claim could be filed within the period of limitation and the Court could permit filing of the counter claim, after written statement, till the stage of framing of the issues of the trial or at the maximum, till the stage of commencement of recording of the evidence, on

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behalf of the plaintiff. To so substantiate her submissions, learned counsel has placed reliance upon *Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others, 2020 (2) SCC 394*.

At the very outset, useful reference is made to *Ashok Kumar Kalra's case (supra)*, wherein, reference was made to the larger Bench of the Hon'ble Supreme Court, thereby, seeking clarification, as to whether a counter-claim could be filed, after submission of the written statement. In the said case, in a suit for specific performance filed by the plaintiffs, defendant No.2 had filed written statement. Thereafter, he had filed the counter-claim, in the same suit, after framing of the issues and learned trial Court, rejected the objections raised by the plaintiffs and treated the counter-claim as part of the proceedings. However, the High Court, quashed the counter-claim of defendant No.2 and being aggrieved, the parties reached the Hon'ble Supreme Court and reference arising out of the order dated 10.09.2018 passed by Two Judges Bench of the Hon'ble Supreme Court, had sought clarification, as to the interpretation of Order VIII Rule 6A CPC. For the convenience of the discussion, the order dated 10.09.2018 is as herein given:-

“3. The papers to be placed before the Hon'ble Chief Justice of India for constitution of a three-Judge Bench to look into the effect of our previous judgments as well as whether the language of Order VIII Rule 6A of the Civil Procedure Code is mandatory in nature.”

For answering the aforesaid reference, in the light of the arguments advanced, on behalf of the parties, the following issues were formulated, for consideration before the Court, which read, as herein given:-

- 1) *Whether Order VIII Rule 6A of the CPC mandates an embargo on filing the counter-claim after filing the written statement?*
- 2) *if the answer to the aforesaid question is in negative, then what are the restrictions on filing the counterclaim after filing of the Written Statement?*

While going through the provisions of counter-claim, as set up in Order VIII Rule 6A and further, it was observed by the Hon'ble Bench, as herein given:-

“When we look at the whole scheme of Order VIII CPC, it unequivocally points out at the legislative intent to advance the cause of justice by placing embargo on the belated filing of written statement, set-off and counter-claim.”

Therein, certain earlier judgments of the Hon'ble Supreme Court, which dealt with Order VIII Rule 6A were also considered. Even, case law relied upon by learned counsel for the petitioner i.e. ***Mahender Kumar's case (supra)*** and ***Vijay Prakash Jarath's case (supra)***, were also taken into consideration and further, while making observations with regard to the implications of the belated filing of the counter-claim, also it was specifically observed in paragraph No.19, as herein given:-

*“In this regard having clarified the law, we may note that the **Mahendra Kumar Case (supra)** needs to be understood and restricted to the facts of that case. We may note that even if a counter-claim 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 counter-claim, 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 counter-claim.”

Further, while summing up the findings, it was observed that Order VIII Rule 6A of the CPC does not put an embargo on filing the counter-claim, after filing the written statement. Rather the restriction is only with respect to the accrual of the cause of action. However further, it was also observed that this does not give absolute right to the defendant to file the counter-claim with substantive delay, even if the limitation period prescribed has not elapsed. Also, the Hon’ble Court held that the Court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The Court, in such cases, have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating inclusive factors, which were observed to be only illustrative, though not exhaustive, which read, as herein given:-

- 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. And facts and circumstances of each case.
- x. In any case, not after framing of the issues.

Accordingly, the reference was answered. However, while partly supplementing and partly dissenting, one of the Lordship’s had observed that he agrees with the conclusion that the Court may exercise its discretion and permit the filing of a counter-claim, after filing of the written statement, till the stage of framing of the issues of the trial. However, in addition to the same, it was also opined that in exceptional circumstances, the subsequent filing of a counter-claim may be permitted, till the stage of commencement of recording of the evidence on behalf of the plaintiff.

In the light of the aforesaid dictum, at the maximum, a counter-claim could be filed before commencement of recording of the evidence on behalf of the plaintiff. However, in the present case, as already observed aforesaid, it was after about 15 hearings, after filing of the written statement, when the case was at the stage of recording of the further evidence of the plaintiff, the present application was filed by the petitioner-defendant No.3. Hence, it was filed at a belated stage and therefore, in the light of the aforesaid dictum, the application, as such, could not be allowed and thus, the order of dismissal of the application, warrants no interference, in exercise of revisional jurisdiction by this Court.

Hence, the revision petition is hereby dismissed.

All the pending civil misc. applications, if any, shall stand disposed of.

March 04, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No