

Court No. 6
(265719)

20.08.2025
(A 1329)
(S. Banerjee)

CO 416 of 2025

Gautam Biswas & Anr.
Vs.
Anupam Biswas & Anr.

Mr. Indrajun Dutta
Mr. Atanu Basu

...for the petitioners

Mr. Abhimanyu Banerjee
Ms. Priyanka Yadav

...for the opposite parties

Affidavit of service filed in Court today, is taken
on record.

This application under Article 227 of the
Constitution of India is at the instance of the plaintiff
and is directed against an order dated December 18,
2024 passed by the learned Civil Judge (Jr. Division),
1st Court at Alipore in Ejectment Suit No. 153 of
2023. By the order impugned, the application for
amendment of the written statement for incorporating
the counterclaim, stood allowed.

Learned advocate appearing for the petitioners
submits that the application for amendment of the
written statement was filed after framing of issues. He
submits that the Hon'ble Supreme Court in the case
of *Ashok Kumar Kalra -Vs.- Wing Cdg. Surendra
Agnihotri & Ors.*, reported at 2019 SCC Online SC

1493 held that the counterclaim has to be filed before framing of the issues. In support of such contention he also places reliance upon an order passed by a coordinate bench on March 11, 2024 in CO 3029 of 2022 in the case of *Mohan Bhattacharjee –Vs.- Smt. Shibani Bhattacharjee & Ors.*. He, therefore, submits that the learned trial judge exceeded its jurisdiction by allowing the prayer for amendment in order to incorporate the counterclaim.

Learned advocate appearing for the opposite parties submits that the application for amendment of the written statement was filed immediately after framing of issues and prior to the commencement of the witness action. He submits that the Hon'ble Supreme Court in *Ashok Kumar Kalra (supra)* has observed that the counterclaim can be set up even after framing of issues. In support of such contention he also places reliance upon a decision of a coordinate bench in the case of *Sri Prahlad Roy –Vs.- Sri Asit Roy*, reported at 2023(4) Cal HCN 362.

Heard the learned advocates for the respective parties.

It is not in dispute that the application for amendment of the written statement for the purpose of incorporation of the counterclaim, was filed after

framing of issues but prior to the commencement of witness action.

The Hon'ble Supreme Court in the case of *Ashok Kumar Kalra (supra)* held that the court may entertain a counterclaim even after framing of issues so long as the court has not started recording the evidence as there is no significant development in the legal proceeding during the intervening period between framing of issues and commencement of recording of evidence. The Hon'ble Supreme Court further observed that if a counterclaim is brought during such period, new issue can still be framed by the court, if needed, and evidence can be recorded accordingly, without seriously prejudicing the rights of either party to the suit.

An identical issue fell for consideration before a coordinate bench in the case of *Prahlad Roy (supra)* wherein the coordinate bench after considering the decision of the Hon'ble Supreme Court in the case of *Ashok Kumar Kalra (supra)* held that in exceptional case the counterclaim can be filed even after framing of issues but before evidence has started.

In *Mohan Bhattacharjee (supra)* counterclaim was sought to be introduced by way of amendment of written statement. In that case the application for amendment of the written statement was filed at the

fag end of the suit and at the stage of evidence. On the facts of that case the coordinate bench refused to allow the counterclaim to be incorporated by way of amendment of the written statement. The said decision being distinguishable on facts, cannot come to the aid of the petitioners in the case on hand.

In the case of *Mahesh Govindji Trivedi –Vs.- Bakul Maganlal Vyas & Ors.*, reported at 2022 LiveLaw (SC) 836, the Hon'ble Supreme Court after reiterating the proposition of law laid down by the Hon'ble Supreme Court in *Ashok Kumar Kalra (supra)* observed that the majority opinion has been that the defendant cannot be permitted to file counterclaim after the issues are framed as the suit has proceeded substantially. In the case on hand the suit has not proceeded substantially after framing of issues and it is only immediately after framing of issues that the counterclaim was sought to be set up by way of amendment of the written statement. This court, therefore, holds that the decision in the case of *Mahesh Govindji Trivedi (supra)* cannot also come to aid of the petitioners.

The learned trial judge held that the cause of action for the counterclaim was well within the period of limitation as per the provisions of Order 8 Rule 6A of the Civil Procedure Code. The application for

amendment of written statement for incorporation of counterclaim was filed immediately after framing of issues but before the evidence has started. By applying the proposition of law laid down in Ashok Kumar Kalra (supra), the Court is of the view that the learned trial judge was right in allowing the prayer for amendment for incorporation of the counterclaim.

For such reasons, this court is not inclined to interfere with the order impugned. Accordingly, CO 416 of 2025 stands dismissed.

(Hiranmay Bhattacharyya, J.)