

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS

CO 1414 OF 2024

PARTHA PRATIM ROY.

VS

SMT. ROMI ARORA

For the Petitioner : Mr. Sanjoy Mukherjee, Adv.

Mr. Amit Nath, Adv.

Mr. Chiranjit Pal, Adv.

For the Opposite Party : Mr. Aneek Pandit, Adv.

Mr. Debopraya Ghosh, Adv.

Mr. Avijit Kundu, Adv.

Last Heard on : 18.06.2025

Judgement on : 02.07.2025

CHAITALI CHATTERJEE DAS, J:-

1. This revisional application is directed against an order dated 8th February 2024, passed by learned Additional Civil Judge, Junior Division 3rd Court Alipore, 24 Parganas South in Title suit number 950 of 2021, filed by the plaintiff/ Opposite Party on June 13,, 2023, whereby the application filed by the plaintiff for rejection of the counter claim of the defendant has been allowed.
2. The fact of the case in a nutshell is that the present Opposite Party being the plaintiff filed a title suit before the Learned Court of Civil Judge Junior

Division, 3rd court at Alipore praying for a decree of eviction against the defendant from the suit premises along with damages. The said suit was filed on August 16, 2021 and the present Opposite Party/defendant entered appearance on January 27, 2022 and on March 8, 2022 was fixed for filing written statement with a direction upon the plaintiff to serve copy of the documents to the defendant on said date.

3. On June 9, 2022, the defendant made a prayer to extend the time for submission of written statement on the ground of non-service of the copy of the annexure to the plaint was refused on the ground that the statutory period for filing the written statement was over with a direction to show cause as to why the suit should not proceed ex-parte and the date was fixed on July 28, 2022 for showing cause by the defendant/petitioner. On the said date the defendant/ petitioner filed written statement along with counterclaim and petition for acceptance of the written statement with counter claim and also showing cause for the delay. On February 10, 23, the defendant filed a petition under Section 151 of the Code of Civil Procedure, praying for filing the deficit, Court fee on the counter claim and after hearing the show cause petition, the written statement was accepted subject to payment of cost of ₹1000 and directed the defendant/petitioner to file the deficit court fee on the counterclaim.

4. On March 23, 2023 the defendant filed the deficit court fee of ₹4280 on counterclaim and the date was fixed on June 13, 23 for payment of cost to the plaintiff which was paid on the very next day on June 13, 2023. On June 13,, 2023 an application was filed by the Opposite Party/plaintiff for rejection of the counter claim principally on the ground on merit of the

counter claim of the defendant. The learned Trial court allowed such application of the plaintiff on 8 February 2024 and rejected the counter claim on the ground that counter claim was not accepted on February 10, 2023 itself considering that the counterclaim has been filed along with the written statement as mandated under order 8 Rule 6A and therefore the counter claim is liable to be dismissed.

5. The Learned Advocate appearing on behalf of the petitioner submits that from the tenor of the order, it can be gathered that the Learned Court relied upon the provision of Order 8 Rule 6 A of the Code of Civil Procedure where it has been provided that the defendant should file the counter claim before the expiry of the stipulated time for delivering his defence. Therefore, the learned trial court was of the view that the time limited for filing the counterclaim is terminus with the period of filing the written statement, but question arises when the learned court accepted the written statement and directed the petitioner to pay the deficit court fees how can come to an observation that the period to file the counter claim has expired.

6. The learned Advocate has relied upon a decision of the Hon'ble Supreme Court in Ashok Kumar, Kalra vs Wing CDR Surendra Agnihotri and others reported in¹ where the Hon'ble Three Judges Bench of the Supreme Court held that the outer limit for filing the counter claim should be till the issues are framed. He further argued that the Hon'ble Supreme Court further held that the procedural rule should not come in the way to defeat Justice. He specifically relied on the paragraph 42, 43 and 50 of the said judgement. Furthermore, Article 59 the limitation Act provides the period of three years

¹ (2020) 2 SCC 394

to cancel or set aside any deed or instrument from when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract is rescinded first becomes known to him.

- 7.** The learned Advocate further relied on a decision reported in² *State of Punjab and others vs Gurdeep Singh*, in this regard where Hon'ble Supreme Court had looked into Article 113 of the limitation Act which provides for right to sue. It is their specific case that the defendant had no knowledge about the transfer deeds which were mentioned in the plaint till the suit was filed and only after receiving the Writ of summons on January 27, 2022 the fact was known to defendant and then, the instant counter claim had been filed on July 28, 2022. Therefore, clearly the claims of the defendant for rescinding deeds are well within the ambit of Article 59 of the Limitation Act.
- 8.** That apart, the claim of adverse possession is based on Section 27 of the limitation act, where because of efflux of time the right to property of the original owner may be extinguished and the burden of proof rest upon the claimant of such adverse possession. Therefore the claim cannot be said to be barred by limitation and also has to be decided in trial. Reliance is also placed to the judgement reported in³ *Thankamma George versus Lilly Thomas and another* where Hon'ble Supreme Court had explained the ambit and scope of Article 58 and 59 of the Limitation Act.
- 9.** The case of the Opposite Party on the other hand is that on February 8, 2024, the petition dated June 13,, 2023 is that the petitioner did not challenge the initial order of February 10,23 whereby the Learned Trial

² (1991) 4 SCC 1

³ (2024) 8 SCC 351

Court declined to accept the counterclaim but accepted the written statement with a cost of Rs. 1000/- and acted upon that by depositing the deficit court fees but by filing this revisional application sans challenged the said initial order dated February 10, 23 long after 3 years without any application for condonation of delay.

10. Further stand taken that the order dated June 13, 2023 was erroneous as recorded by the officer-in-charge since the presiding officer was on leave. Moreover the defendant claimed adverse possession which is not permitted in the eye of law since a co-owner/ co-sharer cannot claim adverse possession against other co-sharer. In this regard, the Learned Advocate relied upon a decision reported in⁴ Mohammad Baqar & ors vs Naim-un-nisa Bibi & It is espoused by the Learned Advocate that the counter claim of the petitioner/defendant raises claims and pleadings which are not only mutually destructive and conflicting but necessary antithetical to the settled proposition of law . In this regard, the Learned Advocate has relied on a decision of Hon'ble Supreme Court reported in⁵ Damodar Narayan Swale (D) through legal representatives versus Teja Rao Bajirao Mhaske.

11. It is further submitted that registration of a document is deemed knowledge, and once the petitioner admitted in his written statement that the sale deed was registered, the knowledge is to be reckoned from the date of registration and the right to sue arose first in the year 1940 and subsequently in the year 1963 at best. In this regard, the learned advocate

⁴ AIR 1956 SC 548

⁵ AIR 2023 SC 3319

relied upon paragraph 10 of the decision reported in⁶ Suraj Lamp and Industries Pvt. Ltd. vs State of Hariyana and Anr.

12. The last point taken by the learned advocate that the counterclaim and suit are not substantially different, hence susceptible to laws of limitation and other laws governing admissibility of suit. In this regard, the decision relied upon as reported in⁷ Mahendra Kumar and others versus state of Madhya Pradesh and others. It is further argued that the first right to sue or cause of action if any arose back in 1940 and subsequently in 1963 at best, which pertains to personal knowledge of deceased individuals on whom the revisionist petitioner, neither can plead or affirm and the counterclaim is, consequently ex facie barred by the law of limitation, and hence this revisional application is liable to be rejected.

13. After hearing the rival contentions and going through the materials on record as well as the written notes of argument as filed before this Court, by both the Learned Advocates, prima facie it is seen that the dispute pertains to refusal to accept the counter claim which was filed along with the written statement when the written statement was accepted subject to payment of cost. The petitioner has challenged the Order impugned whereby the learned Court considering the provision under Order 8 Rule 6A of the Code of Civil Procedure refused to accept the counterclaim on the ground of expiry of statutory period. The learned court took note of the decision of Savitri Nath versus Sabitri Devi reported in⁸ where it was held that '*while the defendant's cause action for a counterclaim may be different and independent of the*

⁶ AIR 2012 SC 206

⁷ AIR 1987 SC 1395

⁸ AIR 2010 Gau 169

cause of action of the plaintiff's suit and the cause of action for the counterclaim may arise before the plaintiff's suit or it might have arisen after the institution of the suit but the counter claim must be made before the written statement is filed or before the date of filing written statement expires.'

- 14.** The petition for rejection of counter claim was filed by the plaintiff/Opposite Party where the stand was taken that alleged counter claim is barred by law of limitation, as it has not been filed within the stipulated time as per law provides and till date, the defendant has failed to deposit necessary ad-valorem Court fees within the stipulated time.
- 15.** It is evident that the plaintiff/Opposite Party raised objection on two fold grounds. Firstly, the counterclaim was filed after expiry of the Outer limit of the stipulated time period and secondly, the cause of action of the counter claim is barred by limitation. The order impugned clearly shows that the second point was not raised before the learned court and on the basis of the objection raised regarding expiry of the statutory period the order was passed. The submission about the statement made in paragraph 8B of the written statement, about the knowledge of the petitioner about the purchase of the property in the name of Amodini Dasi, wife of Tarini Bhushan Raut on 26.4.1940 and the defendant is the son of Kanaklata Roy, the daughter of Seth Kumudini Dasi. Kanaklata Roy died on August 15, 1978 at the said house at 8/16 Cornfield Road, where the father of the defendant died on June 7, 1981 at Bagnan. Ors, cannot be decided at the stage of filing of counter claim and it requires evidence to prove by the petitioner by adducing evidence.

16.In the decision of Ashok Kumar Kalra (*Supra*) Court has discussed the scheme of Order 8 Rule 6A of the Code of Civil Procedure, 1908 regarding the legislative intention to impose restrictions on belated filing of written statement, set off and counter claim under the provision. It was argued before the Hon'ble Supreme Court that the language of the statute and the scheme of the Order indicate that the counter claim has to be a part of the written statement. The Learned Advocate also relied on the statutory requirement that the cause of action relating to a counter claim must arise before the filing of written statement and therefore must form a part of the written statement.

17. The Hon'ble Supreme Court emphasised on the importance of both procedural and substantive justice and considered the provision of order 8 of the Code of Civil Procedure, 1908 and right to claim under Rule 6A, in addition to the set off in respect of cause of action by the defendant before filing the written statement. The Hon'ble Supreme Court further discussed the cases pertaining to the limitation applicable to filing such counter claim and considered the various decisions dealing with the said provision and held that limitation is not explicitly provided by the legislature, rather only limitation as to the accrual of the cause of action is provided. However, it was observed that time barred suits cannot be entertained under the guise of counterclaim just because the cause of action arose as per the parameters of Rule 6A. It was further held that Rule 6A does not provide an embargo on filing counter claim after filing the written statement, but restricted the exercise of such discretion to allow the filing of counterclaim till the framing of issues for trial. The observations made by the Supreme

Court taking note of various judicial pronouncement made in paragraphs 42,43,50 are as follows ;

42. *It was argued by the counsel for the respondent that Order 8 Rule 6-(1) requires that the cause of action for a counterclaim should arise before the filing of the written statement, and hence it is logical that the counterclaim, or the grounds upon which it is based, should also find a mention in the written statement. To support this, he relied on Order 8 Rule 6-B, which states that a defendant seeking to rely upon any ground in support of his right of counterclaim ,shall specifically state in his written statement that he does so by way of a counterclaim.*

43. *I do not agree with this view for two reasons:*

43.1. *First, it is possible that at the time of filing the written statement, the defendant is unaware of the facts giving rise to the cause of action for his counterclaim. For instance, in a suit for declaration of title brought by the plaintiff against his sister, the defendant may be unaware that the plaintiff has wrongfully detained her belongings kept at the said property, at the time of filing her written statement. In such a situation, even though the cause of action for her counterclaim of wrongful detention of belongings may have arisen before the filing of the written statement, it may not have been possible for her to raise the said counterclaim. Similarly, limited access to justice, especially in rural areas, shaped by the socio-economic context of parties, may compel the filing of belated counterclaims.*

43.2 *Second, a perusal of Order 8 Rule 6-B suggests that it is only limited to cases where the counterclaim is made along with the written statement. In instances where a belated counterclaim is raised by way of an amendment to*

the written statement, or as a subsequent pleading, Rule 6-B cannot be said to be applicable. This is because in any such case, if the court relies on a technical interpretation of Rule 6-B to disallow the filing of a belated counterclaim, the defendant would still be free to file a fresh suit for such a claim. He may, in such matters, after filing the separate suit, request the court to club the suits or to hear them simultaneously. This may further delay the process of adjudication and would certainly not help the plaintiff in the first suit, who may have opposed the filing of the belated counterclaim. Such multiplicity of proceedings goes against the object with which Rules 6-A to 6-G were introduced to CPC. Thus, the provisions under Order 8 should not be read in isolation, but in a conjoint and harmonious manner, and Rule 6-B cannot be read as a limitation on the court's discretion to permit the filing of a belated counterclaim.

50. *It is well settled that procedural rules should not be interpreted so as to defeat justice, rather than furthering it. This is because procedural law is not meant to serve as a tyrant against justice, but to act as a lubricant in its administration. Thus, when a court sets out to do justice, they should not lose sight of the end goal amidst technicalities. In some cases, this means that rules that have traditionally been treated as mandatory, may be moulded so that their object and substantive justice is not obstructed. It would be apposite to remember that equity and justice should be the foremost considerations while construing procedural rules, without nullifying the object of the legislature in totality. Thus, rules under the Limitation Act which may allow for filing of a belated*

counterclaim up to a long period of time, should not be used to defeat the ends of justice.

18. In view of the above observations of the Hon'ble Supreme Court it is clear that the reason assigned by the Learned Trial Court in refusing to accept the counter claim considering it to be filed after expiry of the stipulated period find no merit.

19. The decision relied upon by the petitioner in State of Punjab and others versus Gurdev Singh (*supra*) with State of Punjab and others versus Ashok Kumar (*supra*) the period of limitation under Article 113 of the Limitation Act for a period of three years was considered to start running when the right to sue accrues. It was observed that *"The right to ordinarily mean, the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against the suit is instituted"*. The decision of Hon'ble Supreme Court in Thangama versus Lilly Thomas (*supra*) the starting point of limitation for a suit for declaration of ownership was considered from the date of knowledge of Sale deed. It was held that it could not be inferred that plaintiff had contemporaneous knowledge of sale deed and limitation started running from the date of execution of sale deed. Hence, starting point of limitation will be from the date of knowledge of execution of sale deed. In the instant case, though the deed was executed about 60 years ago, but the present petitioner/defendant came to knowledge

about such deed only after the plaint was filed by the plaintiff/Opposite Parties. It is also a settled proposition of law as held in the decision of Suraj Lamp and Industries Pvt. Ltd. v State of Hariyana and Anr. (*supra*) that Registration of document is deemed knowledge but when the date of knowledge of such document is taken from the date of receiving the summons of the suit and filed counter claim within the stipulated period from that date of knowledge, the said counter claim cannot be refused at the stage of acceptance, considering the scheme of Order 8 Rule 6A of Code of Civil Procedure 1908 and hence this decision is not applicable in the facts and circumstances of this case.

20. The stand taken by the opposite party that an erroneous order was recorded by the Learned Court since the regular officer was on leave has hardly any scope of consideration as the said order was never challenged. By virtue of such order the defendant was directed to deposit the deficit Court fees. Order 7 of the Code of Civil Procedure lays down the provision of filing or institution of suits and in terms of that the plaint must be filed with court fee stamps in accordance with the valuation upon it. It is a settled down that counter claim is to be treated as a plaint and governed by the rules applicable to plaint, accordingly properly stamped on the basis of the valuation of the claim. In this regard the decision relied upon on behalf of the opposite party on Mahendra Kumar and Ors. vs State of M.P and ors. (*supra*) may be look into where also it was observed *‘that Under Article 113 of Limitation Act, 1963, the period of limitation of three years from the date the right to sue accrues has been provided for any suit for which no period of limitation is provided elsewhere in the schedule . It is not disputed that a*

counter claim ,which is treated as a suit under section 3 (2) (b) of the Limitation Act had been filed by the appellants within 3 years from the date of accrual to them of the right to sue'. Therefore when the learned court allowed to pay the deficit court fees without making any comment on the point of limitation that too on the basis of the petition filed by the petitioner for acceptance of deficit court fee the subsequent order refusing to accept the counter claim on the ground of limitation appears to be without application of mind.

21. The judgement relied upon by the Learned Advocate appearing on behalf of the Opposite Party in Mohhammad Baqar and Ors vs Naim-UN-Nisa Bibi and Ors (*supra*) which relates to application of limitation Act regarding possession of co-owners that under the law possession of one co-sharer is possession of all co-sharer it cannot be adverse to them unless there is a denial of their right to their knowledge by the person in possession and exclusion and ouster following there on for the statutory period, is a settled proposition but cannot be the ground of refusal to accept counter claim even if such ground has been taken in the counter claim. The other decision of Supreme court in Damodhar Narayan Sawale (D) through LRs v Tejrao Bajirao Mhaske (*supra*) that mutually destructive pleadings are impermissible also cannot be relevant in the instant case since it is a matter to be adjudicated upon as to whether the pleadings are mutually destructive are not.

22. It is also a settled propositions of law that the counter claim filed on the basis of cause of action arises after filing of the plaint is not permissible but in the instant case the claim has been filed for cause of action arose much

before the filing of the suit but the knowledge of the petitioner accrues from the plaint itself. However the court must exercise the discretionary power judiciously considering the subservience of justice and after taking into account the question of serious injustice or irreparable loss. The learned Trial court accepted the written statement but on account of deficit court fees permitted the petitioner to pay the deficit court fees and allowed the prayer of the petitioner to that extent and therefore while such court fees were to be paid cannot refuse to accept the same on the ground of expiry of the stipulated period and therefore the order of the learned trial court is liable to be set aside.

23. Accordingly this revisional application stands allowed. The order passed by the learned court of Additional Civil Judge (junior Division)3rd Court at Alipore dated 08.02.24 is hereby set aside

24. No order as to costs.

25. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)