

10.07.2025
SI No.A 562
Ct. No.6
S.A.

CO 4290 of 2024

Ayan Roy
-vs-
Sudip Kumar Ghosh & Anr.

Mr. Somnath Roy Chowdhury
Ms. Arpita Chowdhury
...for the petitioner
Mr. Ifterkar Munshi
...for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order no.31 dated November 27, 2024 passed by the learned Civil Judge (Junior Division), 1st Court, Howrah in Title Suit No.1107 of 2022.

By the order impugned, the application under Order VI Rule 17 of the Code of Civil Procedure filed by the defendants/opposite parties herein for setting up a counter claim stood rejected.

Learned advocate appearing for the petitioner submits that the application for amendment of the written statement was filed for setting up a counter claim after the date for argument for the suit was fixed. He further submits that the cause of action of the counter claim is after the date of filing of the written statement.

Learned advocate appearing for the opposite parties submits that an application for amendment of

written statement should be construed more liberally than that of the plaint. He submits that filing counter claim being a subsequent event the learned Trial Judge rightly allowed the application for amendment of the written statement. He further submits that the proposed amendments are necessary for the purpose of deciding the real controversy between the parties.

Heard the learned advocates for the respective parties and perused the materials placed. The petitioner herein filed a suit for eviction upon revocation of licence. The opposite parties herein are contesting the said suit by filing a written statement.

It is not in dispute that the written statement was filed on 1st day of March, 2023. After going through the schedule of amendment of the written statement, this Court finds that it has been specifically stated in the schedule of amendment more particularly in paragraph D thereof that the cause of action of the counter claim arose on and from 20th day of August, 2024 and on each day thereafter at holding No.9/2, Haricharan Banerjee Road, Post Office and Police Station-Belur, District-Howrah.

Order VIII Rule 6A of the Code of Civil Procedure states that a defendant in a suit may, in addition to this right of pleading a 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 limited for delivering his defence has expired, whether such counter claim is in the nature for damages or not.

It is evident that the cause of action for the counter claim arose long after the filing of the written statement.

It is now judicially settled that Order 8 Rule 6A of the Code of Civil Procedure does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to accrual of cause of action.

In view of the specific bar under Order VIII Rule 6A to set up a counter claim in respect of a cause of action accruing to the defendant after the defendant has delivered his defence, this Court of the considered view that the order allowing the application for amendment of written statement is liable to be set aside.

Accordingly, the impugned order is set aside.

The application for amendment of written statement stands rejected.

CO 4290 of 2024 stands allowed.

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

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)