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IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.661 of 2025

(In the matter of an application under Article 227 of the Constitution of India)

Jyotsnamayee Dash .... ***Petitioner***

-versus-

Seema Agarwal ... ***Opposite Party***

Advocate(s) appeared in this case:-

For Petitioner : Mr. Bichitra Narayan Satapathy, Advocate

For Opp. Party : Mr. S. Mishra, Advocate

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

8th December, 2025

B.P. Routray, J.

1. Heard Mr. B.N. Satapathy, learned counsel for the Petitioner and Mr. S. Mishra, learned counsel for the opposite party.

2. Present CMP is directed against order dated 2nd April, 2025 of learned Senior Civil Judge, Bargarh passed in CS No.34 of 2014, wherein the prayer for amendment of the written statement of the defendant to insert the counter claim has been rejected.

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3. Present opposite party is the plaintiff who filed the suit praying for declaration of right, title, interest and confirmation of possession and permanent injunction along with consequential reliefs. The defendant (present petitioner) appeared in the suit and filed her written statement. Thereafter the suit proceeded and the evidence from the side of the plaintiff was closed. The defendant also examined two of her witnesses and did not complete her evidence. On 10th February, 2025 before completion of evidence from her side, the defendant filed a petition praying to insert counter claim in the written statement seeking relief of cancellation of two sale deeds as void and further to declare her right, title, interest over the property along with permanent injunction against the plaintiff. This prayer of the defendant was rejected by the learned trial court on the ground that it is submitted at a very belated stage.

4. Rule 6-A permits for filing of counter claim by the defendant with the discretion on the court to refuse acceptance of the same at a belated stage. The provision under Rule 6-A of Order 8 C.P.C. is reproduced bellow for better appreciation.

> **6-A. Counter-claim by defendant**. **(1)** A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6,

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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 of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints."

5. The Hon'ble Supreme Court while explaining the effect of delayed filing of counter-claim has laid down the law for acceptance of the same and the time period in that respect. In ***Ashok Kumar Kalra v. Wing CDR Surendra Agnihotri and Others, (2020) 2 SCC 394,*** Hon'ble Apex Court have held as follows:-

"**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

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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.

Xx .. .. xx ..

60. Having considered the previous judgments of this Court on counterclaims, the language employed in the rules related thereto, as well as the intention of the legislature, I conclude that it is not mandatory for a counterclaim to be filed along with the written statement. The court, in its discretion, may allow a

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> counterclaim to be filed after the filing of the written statement, in view of the considerations mentioned in the preceding paragraph. However, propriety requires that such discretion should ordinarily be exercised to allow the filing of a counterclaim till the framing of issues for trial. To this extent, I concur with the conclusion reached by my learned Brothers. However, for the reasons stated above, I am of the view that in exceptional circumstances, a counterclaim may be permitted to be filed after a written statement till the stage of commencement of recording of the evidence on behalf of the plaintiff."

6. From the afore-cited decision it is clear that the counter-claim should be filed latest before recording of evidence on behalf of the plaintiff. Admittedly in the present case at hand, the stage of the suit is at continuing evidence from the side of the defendant, where the defendant has already examined two of his witnesses. It is not disputed that the defendant immediately appeared after receipt of notice in the year 2014 and she without delay filed the written statement. Based on the pleading and counter pleadings of respective parties the suit proceeded and reached up to the present stage where two of the witnesses from the side of the defendant have already been examined. At such stage, in the year 2025, present petitioner is seeking the relief to insert counter-claim on behalf of the defendant without any explanation offered for the delay caused on her part.

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7. A thorough perusal of the petition dated 10th February, 2025 filed by the defendant praying to insert the counter-claim does not reveal any explanation offered by him for the delay caused on her part. Such prayer of the defendant at the midst of her evidence, when the plaintiff has already closed her evidence, to raise the counter-claim years after presenting her written statement is bound to be rejected. It is because the insertion of counter-claim at this stage is not only impermissible as per law laid down by the Hon'ble Apex Court in the afore-cited decision but it would also lead to *de-novo* trial and all such exercises done by the court would be rendered unworthy. Thus the trial court has rightly disallowed the prayer of the defendant refusing her to insert the counter-claim at this belated stage.

8. For the reasons stated above no merit is seen in the impugned order to interfere with the same and the CMP is dismissed.

(B.P. Routray)
Judge

M.K. Panda/P.A