



CRP(MD). No.946 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 02/07/2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRP (MD). No.946 of 2022
and CMP(MD) No.3749 of 2022**

Arumugam (Died)

1. A. Valarm,
2. Meenakshi Sundareswari,
3. A. Sundaravalli,

... Petitioners

Vs

1. Muthumani
Karuppiah (Died)
2. Andichi
3. Thamarai

... Respondents

PRAYER :- Civil Revision Petition filed under Article 227 of The Constitution of India to set aside the fair and executable order dated 06.12.2021 passed in the application in I.A. No. 2 of 2021 in O.S. No. 94 of 2019 on the file of the Subordinate Court, Manamadurai.

For Petitioner : Mr.J.Barathan
For Respondents : Mr.PT.S.Narendravasan for R1 &R3
R2 died



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ORDER

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The Civil Revision Petition is filed against the fair and executable order dated 06.12.2021 passed in the application in I.A. No. 2 of 2021 in O.S. No. 94 of 2019 on the file of the Subordinate Court, Manamadurai.

2. The petitioners are the plaintiffs in OS No.94/2019, which is filed for declaration and permanent injunction against the respondents/defendants. Subsequently, the petitioners/plaintiffs withdrew the suit on 25.03.2021. In the suit, the respondents filed a written statement under Order VIII Rule 1 of the Code of Civil Procedure and there is no counter claim in the written statement. After withdrawal of the suit, the respondents/defendants filed an interlocutory application in the suit to treat the written statement as counter claim and also to restore the suit and proceed in accordance with law under Section 151 of the Code of Civil Procedure. The said petition was allowed by the trial Court vide order dated 06.12.2021 and the trial Court ordered for Court fee for the defendants and pursuant to the same, the defendants paid Court fee. Challenging the said order, the petitioners are before this Court.



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3. The learned counsel for the petitioners would submit that though there is a relevant provision available under Order VIII Rule 6 of the Code, which provides for a mechanism that in any case if the defendants sets up a counter claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter claim may nevertheless be proceeded with. Order VIII Rule 6(A) of the Code makes it clear that when counter claim shall be treated as a plaint and the particulars to be given where necessary and Order VII Rule 1 of the Code clearly narrates the particulars to be contained in plaint. However, in the present case, even a bare perusal of the written statement, there is no counter claim and in the absence of any counter claim, based on the written statement filed by the defendants, the petition was allowed treating the written statement as counter claim, which is impermissible and also contrary to Order VIII Rule 6D of the Code.

4. The learned counsel for the respondents on the other hand would submit that there is no counter claim in the written statement. However, the trial Court directed the respondents/defendants to pay the Court fee and pursuant to the said direction, Court fee was paid and hence,



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challenging the order of the trial Court is not sustainable one. However, the learned counsel would submit that liberty may be granted to the respondents/defendants to file a fresh suit subject to the cause of action and limitation.

5. I have considered the rival submissions and perused the materials available on record.

6. For the sake of convenience: Order VIII Rule 6(A) and 6(D) of the Code of Civil Procedure reads as follows:

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



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(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 rule applicable to plaints.

...

6(D). Effect of discontinuance of suit: - If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with."

7. A perusal of the records would go to show that the petitioners/plaintiffs withdrew their suit on 25.03.2021. In the said suit, the respondents/defendants have filed their written statement. While so, after withdrawal of the said, the respondents/defendants have preferred a petition before the trial Court to treat the written statement as a counter claim. Accordingly, the trial Court allowed the petition and pursuant to the direction, Court fee was also paid. Order VIII Rule 6 of the Code



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deals with the procedure to be adopted and the particulars to be given for counter claim. As per Order VIII Rule 6A and 6D, the counter claim should contain a pleading. However, in the present written statement, in the absence of any pleading, the trial Court has ordered for treating the same as a counter claim. As per Order VIII Rule 6A(2), such a counter claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment, both on the original claim as well as on the counter claim. Here in the case on hand, when the original suit was withdrawn, the written statement is a mere statement, which shall not be construed as a cross-suit. For a counter claim, the plaintiff is at liberty to file a written statement also. However, mere written statement, which is bereft of any particulars, cannot be considered as a counter claim. For the counter claim to be treated as a plaint, it is governed by the rules applicable to the plaint. In the present case, the plaintiffs have also withdrawn the suit before the petition to treat the written statement as a counter claim.

8. In addition Order VII Rule 7 prescribes the relief to be specifically stated. In the present case, by way of written statement, the



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defendants have not asked for any specific relief, while treating the same as counter claim.

9. Apart from this, Order VII Rule 1 of the Code deals with the particulars to be contained in a plaint. In the present case, the written statement is mere a statement and it does not contain the particulars to be contained as per Order VII Rule 1. When that be so, the order of the trial Court is necessarily be interfered with.

10. For all these reasons, the Civil Revision Petition is allowed and the order of the trial Court dated 06.12.2021 in IA No.2/2021 is set aside. The trial Court is directed to return the Court fee, which was paid by the respondents/defendants. No costs. Consequently connected Miscellaneous Petition is closed.

02.07.2025

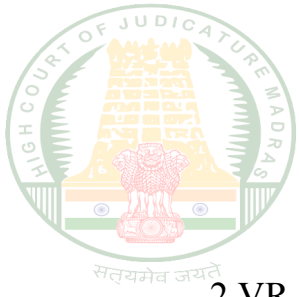
NCC : Yes/No

Index : Yes/No

RR

TO

1.The Subordinate Court, Manamadurai.



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2.VR Section

Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI,J

RR

**ORDER
IN
CRP(MD) (NPD) No.946 of 2022**

Date : 02/07/2025