

**(2019) 08 RAJ CK 0317**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 3801 Of 2017**

Aanandswaroop Tiwari And Ors

APPELLANT

Vs

Vijaylaxmi And Ors

RESPONDENT

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**Date of Decision :** 14-08-2019

**Acts Referred:**

Code Of Civil Procedure, 1908 — Order 8 Rule 6A, Order 8 Rule 6A(1), Order 8 Rule 6E

**Citation :** (2019) 08 RAJ CK 0317

**Hon'ble Judges :** Sanjeev Prakash Sharma, J

**Bench :** Single Bench

**Advocate :** Manish Shishodia, Ravi Bhansali, Shubham Modi, Puneet Parihar

**Final Decision :** Allowed

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## Judgement

1. The question involved in the present petition is no more res integra in view of the judgment passed by the Hon'ble Apex Court in relation to the question whether a counter claim in terms of Order 8 Rule 6A C.P.C. could be filed after a period of 2½ years from the date of filing of the written statement. The Apex Court in Vijay Prakash Jarath vs. Tej Prakash Jarath reported in AIR 2016 SC 1304 has after examining the provisions of Order 8 Rule 6A C.P.C. held as under :-

"8. It is in these circumstances, that we advert to Order VIII Rule 6A of the Code of Civil Procedure, which is being reproduced below:

"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, 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." A perusal of Sub-clause (1) of Section 6A of Order VIII, leaves no room for any doubt, that the cause of action in respect of which a counter claim can be filed, should accrue before the defendant has delivered his defence, namely, before the defendant has filed a written statement. The instant determination of ours is supported by the conclusions drawn in *Bollepanda P. Poonacha & Anr vs. K.M.Madapa* (supra), wherein this Court observed as under:

"11. The provision of Order 8 Rule 6-A must be considered having regard to the aforementioned provisions. A right to file counterclaim is an additional right. It may be filed in respect of any right or claim, the cause of action therefor, however, must accrue either before or after the filing of the suit but before the defendant has raised his defence. The respondent in his application for amendment of written statement categorically raised the plea that the appellants had trespassed on the lands in question in the summer of 1998. Cause of action for filing the counterclaim inter alia was said to have arisen at that time. It was so explicitly stated in the said application. The said application, in our opinion, was, thus, clearly not maintainable. The decision of *Ryaz Ahmed* (supra) is based on the decision of this Court in *Baldev Singh Vs. Manohar Singh* [(2006) 6 SCC 498]." (emphasis is ours) It is not a matter of dispute in the present case, that cause of action for which the counter-claim was filed in the present case, arose before the respondent-plaintiff filed the suit (out of which these petitions/appeals have arisen). It is therefore apparent that the appellants before this Court were well within their right to file the counter-claim.

9. It is quite apparent from the factual position noticed hereinabove, that after the issues were framed on 18.10.1993, the counter claim was filed by the appellants before this Court (i.e. by defendant Nos.3 and 4 before the trial court) almost two and a half years after the framing of the issues. Having given our thoughtful consideration to the provisions relating to the filing of counter claim, we are satisfied, that there was no justification whatsoever for the High Court to have declined, the appellant before this Court from filing his counter claim on 17.06.1996, specially because, it is not a matter of dispute, that the cause of action, on the basis of which the counter claim was filed by defendant Nos.3 and 4, accrued before their written statement was filed on 11.11.1992. In the present case, the respondent-plaintiff's evidence was still being recorded by the trial court, when the counter-claim was filed. It has also not been shown to us, that any prejudice would be caused to the respondent-plaintiff before the trial

court, if the counter-claim was to be adjudicated upon, along with the main suit. We are of the view, that no serious injustice or irreparable loss (as expressed in paragraph 15 of Bollepanda P.Pooncha's case), would be suffered by the respondent-plaintiff in this case."

2. In light of the aforesaid, the facts of the present case are examined. It is noticed that the application moved under Order 6 Rule 17 CPC by the defendants-petitioners to allow their counter claim to be taken on record, has been rejected by the trial Court treating the limitation to be the period of filing the counter claim only to the extent of the period allowed for filing of the written statement and the time further granted for filing has expired. In the opinion of this Court, in terms of the order passed by the Apex Court, the reasoning is wholly faulty and cannot be allowed to be sustained.

3. Another submission raised by the learned counsel for the plaintiff-respondent is with regard to the Proviso to Order 6 Rule 17 CPC which provides that the amendment can only be moved before the trial begins.

4. I have considered the submissions and find that the bar is not absolute in the Proviso to Order 6 Rule 17 CPC which allows amendment subject to the valid reasons to be assigned for the said purpose. This Court in *Ramji Lal Nai vs. Civil Judge Jr. Division, Bamanwas & Ors* reported in 2019(2) DNJ (Raj.) 604, has examined the law relating to Order 6 Rule 17 C.P.C. and keeping in view the law laid down by the Hon'ble Apex Court in *Revajeetu Builders and Developers vs. Narayanaswamy & Sons & Ors.* reported in (2009) 10 SCC 84 and the factors to be taken into consideration, the writ petition was allowed. Para 4 of the judgment rendered in *Ramji Lal Nai's* case (*supra*) reads as under:-

"4. I have considered the submissions and finds that the respondents had preferred a suit for seeking permanent injunction praying that the petitioner should not interfere in the peaceful possession. In the said suit issues were framed and as per the issue Nos. 1 and 2 regarding the possession the Court came to the conclusion that respondents did not have the possession of the property and the property was always in the possession of the petitioner; it also concluded that Commissioner's report cannot be read as it was an *ex parte* report; it also came to the conclusion that the statements of the witnesses clearly proved that the petitioner was always his possession and the petitioner never handed over the property to the respondents and thus, the suit for permanent injunction was dismissed. Appeal against the said judgment came to be dismissed by the appellate Court and this High Court in Second appeal No.256/2006 affirmed the orders in its judgment dated 22.11.2006. Thus, it cannot be said that the petitioner was not in possession on the day of filing of the suit.

So far as subsequent facts or events which came into knowledge or have happened during the pendency of the suit are concerned, the same can always be brought on record by moving appropriate application under Order 6 Rule 17

CPC and a suitable prayer can also be added.

In case of *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others* (2009) 10 Supreme Court Cases 84 the Supreme Court has laid down following guidelines with regard to deciding application under Order 6 Rule 17 CPC:-

"Factors to be taken into consideration while dealing with applications for amendments

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive."

The same were again affirmed by the Supreme Court in the judgment reported in case of *N.C. Bansal Vs. Uttar Pradesh Financial Corporation and Ors.*- 2018(2) SCC 347.

In view of the Apex Court judgments cited supra, the judgment passed by this Court in *Meera Ben (Smt.)* (supra) would stand distinguished."

5. In view of the above, this writ petition stands allowed and the order impugned dated 14.2.2017 is set aside. The application moved by the petitioner under Order 6 Rule 17 C.P.C. is allowed with directions to the trial Court to take on record the counter claim as set up under Order 8 Rule 6A C.P.C. The plaintiff would be entitled to file the written statement/reply to the counter claim within the time prescribed. It goes without saying that the other provisions of Order 8 Rule 6E C.P.C. shall follow.

All pending applications also stand disposed.