

(1995) 01 MP CK 0030

In the Madhya Pradesh High Court

Case No : Civil Revision No. 351 of 1991

Babulal Sobhagmal Modi

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 19-01-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6, Order 8 Rule 6A

Citation : (1997) 2 MPLJ 50

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : A.K. Sethi, for the Appellant; G.L. Gupta, for the Respondent

Judgement

C.K. Prasad, J.

This order shall also govern disposal of Civil Revision No. 429/91, Union of India v. Babulal as both the revision petitions have arisen from the common order.

The plaintiff, Union of India, filed Civil Suit No. 5-B/87 for recovery of Rs. 2,20,000/- against the defendant. According to the plaintiff, the defendant was given the contract of out agency for a period of five years from 1-3-1982. The defendant did not pay a sum of Rs. 1,68,629.40 in terms of Clause 14(8) of the Agreement. According to the plaintiff, the defendant was entitled to receive a sum of Rs. 53,276.22 from the plaintiff and after adjustment of the same, the plaintiff was entitled to recover a sum of Rs. 1,15,353.18 along with interest at the rate of 18% per annum amounting to Rs. 1,04,646.82 and consequently a total sum of Rs. 2,20,000/- was entitled to be recovered from the defendant as principal amount as also the interest.

The defendant filed the written-statement and stated that a sum of Rs. 1,68,629.40 is not liable to be recovered from him as he has submitted bill of Rs. 1,00,375.44 which is pending for payment before the plaintiff. The defendant has further stated that because of the business loss, he is further entitled to receive a sum of Rs. 50,000/- as damages from the plaintiff and a sum of Rs. 10,000/-

as special damages.

By the impugned order dated 27-8-1991 passed by the District Judge, Ratlam, in Civil Suit No. 5-B/87, the learned Judge held that the defendant is liable to pay court fees on the aforesaid counter claim amount of Rs. 50,000/-but is not liable to pay court fees on amount of Rs. 1,00,375.44.

The defendant aggrieved by the aforesaid order by which he was asked to pay court fees on a sum of Rs. 50,000/- has preferred this revision application. The plaintiff, Union of India, aggrieved by the aforesaid order by which it has been held that the defendant shall not be liable to pay court fees on sum of Rs. 1,00,375.44 has preferred Civil Revision No. 429/91.

Mr. G.L. Gupta appearing for petitioner Union of India in C. R. No. 429/91 submits that mere submission of the bill for payment of Rs. 1,00,375.44 by the defendant cannot come within the expression "adjustment" and as such the defendant was liable to pay court fees on the aforesaid amount.

Shri A.K. Sethi, appearing for the petitioner in C. R. No. 351/91 submits that the aforesaid amount comes within the expression "set off and, therefore, the defendant is not liable to pay court fees on the said amount.

Order VIII, Rule 6, CPC provides for particulars which may be given in Written Statement. Order VIII, Rule 6 of the CPC reads as follows :-

Order VIII. Written-statement, set off and counter-claim.

XX XX XX XX Particulars of set off to be given in written statement.

Rule 6(1) Where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.

(2) Effect of set-off. The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off, but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set off.

A reading of Order VIII, Rule 6(2) makes it plain that the effect of set off in the W.S. shall have the same effect as a plaint in a cross suit so as to enable the Court to pronounce a final judgment in respect of both of the original claim and of the set off.

Here, in the present case, the defendant has just laid its claim by submission of the bill and in that view of the matter it cannot be said to claim for adjustment. In this connection reference can be made to a judgment in the case Gupta Pvt. Loan Committee v. Moti Ram, AIR 1984 J&K 38 wherein the learned Judge lucidly laid down the law as follows :-

"One of the basic factors which has to be taken into consideration while determining whether a plea raised in defence is a plea of set-off or of payment by adjustment, is to find out as to whether a separate action could be maintained by the defendant on the basis of the claim made by him. In case a separate claim could be maintained by him and put forward in a separate suit, then the plea would be a plea of set-off and court fee will have to be paid on the claim. On the other hand, if adjustment, had been made prior to the filing of the suit, no court-fee would be payable on the amount, which stood adjusted prior to the institution of the suit, as the plea in the case would be a plea of adjustment by payment. Under Schedule 1, Article 1 of the Court-fees Act, ad valorem court-fee is payable on the set-off claimed but no court-fee need be paid on the plea of adjustment for the simple reason that the plea of adjustment is in the nature of informing the court that prior to the institution of the suit, the amount or a part of it stood adjusted and the plaintiff was not entitled to claim that amount."

It is not the case of the defendant that the amount for which he has submitted the bill has been adjusted. The defendant could maintain separate action in relation to its claim, the plea of defendant is plea of set off and not adjustment. In this view of the matter the order impugned calls for my interference and the same is set aside.

As regards the grievance of the defendant that he is not liable to pay court fees on a sum of Rs. 50,000/- as he has suffered business loss. This is a counter claim led by the defendant in the suit, such claim is permissible to be laid under Order VIII, Rule 6-A of the Code of Civil Procedure, which reads as follows :-

Order VIII, Rule 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, set up by way of counter claim against the claim of the plaintiff any right of 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 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 reading of Order VIII, Rule 6-A makes it plain that the counter claim shall have the same effect as a cross-suit. The said amount has not been claimed by the petitioner as an adjustment and in that view of the matter, the learned Judge was right in directing for payment of the Court fees on the same amount.

In the result Civil Revision No. 429/91 filed by the Union of India against that portion of the impugned order by which the learned Judge has held that the defendant shall not be liable to pay court fees on sum of Rs. 1,00,375.44 is set aside and Civil Revision No. 351/91 is dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.