
(2010) 11 AHC CK 0405
In the Allahabad High Court
Case No : Misc. Single No. 6924 of 2010

Baburam Sharma

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 8 Rule 1, Order 8 Rule 6A, Order 8 Rule 9

Citation : (2011) 3 CivCC 203 : (2011) 6 RCR(Civil) 2262 : (2011) 112 RD 584

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Judgement

Narayan Shukla, J.—Heard Mr. Anurag Shukla, learned Counsel for Petitioner and learned Standing Counsel. The Petitioner is aggrieved with order dated 29.9.2010 passed by Additional District Judge, Court No. 5, Hardoi in Civil Revision No. 61 of 2009, whereby he has permitted to bring on record the additional written statement and counter-claim filed by Respondents in exercise of revisional power. Learned Counsel for the Petitioner submits that counter-claim had been filed at the belated stage i.e., four years; whereas; Order VIII, Rule 6-A of CPC permits to file counter-claim along with written statement prior to the date fixed therefor.

2. In support of his submissions he cited a decision of the Hon'ble Supreme Court rendered in the case of Ratnesh Chand Ardawatiya v. Anil Panjwani 2003 (51) ALR 699 (SC) : 2003 (7) AIC 625 (SC), in the Hon'ble Supreme Court has held as under:

The counter-claim must necessarily find its place in the written statement. Once the right of the Defendant to file written statement has been lost or the time limited for delivery of the defence has expired then neither can the written statement be filed as of right nor a counter-claim can be allowed to be raised, for the counter-claim under Rule 6-A must find its place in the written statement. The Court has a discretion to permit a written statement being filed belatedly

hand, therefore, has a discretion also to permit a written statement containing a plea in the nature of set-off or counter-claim being filed belatedly but needless to say such discretion shall be exercised in a reasonable manner keeping in view all the facts and circumstances of the case including the conduct of the Defendant, and the fact whether a belated leave of the Court would cause prejudice to the Plaintiff or take away a vested right which has accrued to the Plaintiff by lapse of time?

In para-28 the Hon^{ble} Supreme Court has discussed the scope of filing of the written statement, which is reproduced hereinunder:

Looking to the scheme of Order VIII as amended by Act 104 of 1976, we are of the opinion, that there are three modes of pleading or setting up a counter-claim in a civil suit. Firstly, the written statement filed under Rule 1 may itself contain a counter-claim which in the light of Rule 1 read with Rule 6-A would be a counter-claim against the claim of the Plaintiff preferred in exercise of legal right conferred by Rule 6-A. Secondly, a counterclaim may be preferred by way of amendment incorporated subject to the leave of the Court in a written statement already filed. Thirdly, a counterclaim may be filed by way of a subsequent pleading under Rule 9. In the latter two cases the counter-claim though referable to Rule 6-A cannot be brought on record as of right but shall be governed by the discretion vesting in the Court, either under Order VI, Rule 17, CPC if sought to be introduced by way of amendment, or, subject to exercise of discretion conferred on the Court under Order VIII, Rule 9, CPC if sought to be placed on record by way of subsequent pleading. The purpose of the provisions enabling filing of counter-claim is to avoid multiplicity of judicial proceedings and save upon the Courts time as also to exclude the inconvenience to the parties by enabling claims and counter-claims, that is, all disputes between the same parties being decided in the course of the same proceedings, if the consequence of permitting a counter-claim either by way of amendment or by way of subsequent pleading would be prolonging of the trial, complicating the otherwise smooth flow of proceedings or causing a delay in the progress of the suit by forcing a retreat on the steps already taken by the Court, the Court would be justified in exercising its discretion not in favour of permitting a belated counter-claim. The framers of the law never intended the pleading by way of counter-claim being utilized as an instrument for forcing upon a reopening of the trial or pushing back the progress of proceeding. Generally speaking, a counter-claim not contained in the original written statement may be refused to be taken on record if the issues have already been framed and the case set down for trial, and more so when the trial has already commenced. But certainly a counter-claim is not entertainable when there is no written statement on record. There being no written statement filed in the suit, the counter-claim was-obviously not set up in the written statement within the meaning of Rule 6-A. There is no question of such counter-claim being introduced by way of amendment; for there is no written statement available to include a counter-claim therein. Equally there would be no question of a counter-claim being raised by way of "subsequent

pleading" as there is no "previous pleading" on record. In the present case, the Defendant having failed to file any written statement and also having forfeited his right of filing the same the Trial Court was fully justified in not entertaining the counterclaim filed by the Defendant-Appellant. A refusal on the part of the Court to entertain a belated counterclaim may not prejudice the Defendant because in spite of the counter-claim having been refused to be entertained he is always at liberty to file his own suit based on the cause of action for counterclaim.

3. As is evident from the aforesaid observation that at belated stage the Defendants cannot claim for filing the counterclaim along with written statement as of right, it is governed by discretion vesting in the Court. The same proposition has been laid down by the Hon''ble Supreme Court in the judgment rendered in the case of Bollepanda P. Poonbacha and Anr. v. K.M. Madapa 2008 (71) ALR 899 (SC).

It is not in dispute that the Defendants/Respondents filed counterclaim along with additional written statement. Through counterclaim they sought negated relief, for which counter-claim is permissible as has been observed by the Hon''ble Supreme Court in the case of Bollepanda P. Poonbacha (supra).

4. Since there was no specific application moved by the Defendants seeking permission to file counter-claim, learned Counsel for the Petitioner submits that without seeking leave therefore the Court cannot exercise revisional power to entertain the counter-claim; whereas keeping in view the scope of Order VIII, Rule 6-A of CPC as has been discussed by the Hon''ble Supreme Court in the case of Ramesh Chand Ardawatiya (supra), I am of the view that discretion is always vested in the Court irrespective of the fact whether there is application for seeking leave or not.

5. It is the Court who has to exercise his discretionary power to accept the same at the stage of filing of the written statement or additional written statement. The Revisional Court though has not discussed the facts and circumstances of the case, upon which the Court exercised its discretionary power to accept the counter-claim yet keeping in view the facts and circumstances of the case I find that they claimed to remove unauthorised construction raised by the Petitioner on the public way, which required adjudication keeping in view the interest of justice.

6. In view of the aforesaid observation, the writ petition is dismissed.