

(2015) 02 OHC CK 0057
In the Orissa High Court
Case No : Writ Petition (C) No. 6387 of 2004

Bharat Petroleum Corporation Ltd.

APPELLANT

Vs

Gopikrishna Bhattar and Others

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

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

Citation : (2015) 1 OLR 781

Hon'ble Judges : D. Dash, J

Bench : Single Bench

Advocate : Sanjeev Udgata, for the Appellant; D.P. Dhal, Advocates for the Respondent

Final Decision : Allowed

Judgement

D. Dash, J.—The petitioner in this writ application challenges the order dated 29.09.2003 passed by the learned Civil Judge (Junior Division), Jaleswar in T.S. No. 75 of 1987 refusing to accept the prayer of the present petitioner for exclusion of the counter claim tendered by the opposite parties with the aid of provision of the Order 8 Rule 6(C) of the Code of Civil Procedure and that was refused to be interfered with in the civil revision filed in the Court of learned District Judge, Balasore.

2. Heard learned counsel for the parties. Perused the impugned order. It reveals that the petitioner prayed for exclusion of the counter claim filed by the opposite parties on the ground that the cause of action as averred for the said counter claim is not said to have accrued to the defendant against the plaintiff before the delivery of defence or before the time limited for delivering the defence had expired.

3. The provision of the Order 8 Rule 6(A) to (G) of the Code of Civil Procedure concern with counter claim by the defendant which may be set up. It may be independent of the claim on the basis of which the plaintiff laid the suit, on his

own cause of action. Sub-rule (1) of Rule 6-A of the Code enables the defendant to bring his own independent cause of action in respect of any claim that would be the subject matter of an independent suit. The only limitation is that the cause of action must have arisen before the time fixed for filing the written statement expired, it may be after institution of suit.

4. A careful reading of the order of the Court below goes to show that the main objection raised by the petitioner to exclude the counter claim has not been so dealt with and the Court below has simply been swayed away by the fact that as the counter claim is not exceeding the pecuniary jurisdiction of the Court, the same is not liable to fall under the net of Order 8 Rule 6(C) of the Code

5. The decision of the Apex Court in case of Jag Mohan Chawla and another Vs. Dera Radha Swami Satsang and others, (1996) 4 AD 667 : AIR 1996 SC 2222 : (1996) 2 CTC 681 : (1996) 5 JT 428 : (1996) 114 PLR 308 : (1996) 4 SCALE 585 : (1996) 4 SCC 699 : (1996) 2 SCR 509 Supp : (1996) 2 UJ 167 though has been referred to, the principles stated therein appears to have not been correctly applied to the facts of the present case. The revisional Court has refused to interfere with the order holding that impugned order even if would have been passed in favour of the petitioner it would not have finally disposed of the suit. The trial Court has not gone to examine the matter of entertainment or exclusion of counter claim in the light of provision of Order 8 Rule 6(A) of the Code considering the aspect as to if the cause of action for the counter claim has accrued before the time fixed for filing the written statement expired or not.

6. For the aforesaid discussion, this Court finds error of law apparent on the face of the order of the learned Civil Judge (Junior Division), Jaleswar for being interfered with. Resultantly, said order is quashed. The matter is remitted to the Court of learned Civil Judge (Junior Division), Jaleswar to dispose of the petition filed by the petitioner for exclusion of the counter claim in consonance with the provision as contained in Order 8 rule 6(A) read with Rule 6(C) of the Code keeping in mind the principles settled in the decision of the Apex Court in case of Shri Jag Mohan (supra) and the observation made herein above.

7. The writ application is allowed as aforesaid. No order as to cost. The suit being of the year 2003, the Court below is directed to bestow due attention for its early disposal in accordance with law.