

(1992) 07 CAL CK 0065
In the Calcutta High Court

East India Rubber Works (P) Ltd.

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

Date of Decision : 20-07-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6A, Order 8 Rule 6B, Order 8 Rule 6C, Order 8 Rule 9, 115

Citation : (1993) 2 CALLT 1 : 97 CWN 319

Hon'ble Judges : Samir Kumar Mookherjee, J; Sachi Kanta Hazari, J

Bench : Division Bench

Advocate : Girish Gupta and Bimalendu Das, for the Appellant; Ashoke Banerjee and Dipak Das, for the Respondent

Judgement

Samir Kumar Mookherjee, J.—This Revisional application is directed against an order dated 4th of March, 1992 passed by the learned Assistant District Judge, 2nd Court, Howrah, in Title Suit No. 112 of 1988, whereby the learned Assistant District Judge rejected an application under Order 8 Rule 9 C.P.C. preferred on behalf of the defendant in the suit, which is the petitioner before this Court. Since a caveat had already been lodged and Mr. Ashoke Banerjee is appearing with Mr. Dipak Das on behalf of the contesting plaintiff bank, we have heard out the application is a contested application with their consent.

2. The copy of the application under Order 8 Rule 9 of the CPC is Annexure "B" to the present Revisional application. From the materials produced, it appears that while filing the written statement, the defendant reserved its right to file a counter-claim. It also appears, as pointed out by Mr. Banerjee, that the attempt on the part of the defendant to get the written statement amended had also failed, but the admitted position remains that the defendant had throughout been reserving its right to file a counter-claim against the plaintiff.

3. From the impugned order, it appears that the Court rejected the application, which is really in the nature of a counter-claim, on the ground that, that was sought to be filed without any leave of the Court, overlooking the statutory

provision of Order 8 Rule 9 of the Code of Civil Procedure, which clearly excluded "set off" and "counter claim" from the matters in which leave of the Court was required. On consideration of the provisions of Order 8 Rules 6A, 6B and 6C of the CPC we are of the view that the counter-claim, once filed, becomes a plaint and continues on the records of the suit until the conclusion of the trial, save and except the occasion where the plaintiff, after filing of his written statement to the counter-claim can convince the Court that the counter-claim ought to constitute the cause of action of different suit (Vide Order 8 Rule 6C, C.P.C). Accordingly, the impugned order cannot be sustained. It is vitiated by the misconception on the part of the Court that before filing counter-claim, leave of the Court was necessary. The purported application should be treated as a counter-claim of the defendant and dealt with a conformity with the provisions of Order 8 Rule 6C onwards.

4. We make it clear that we have not, however, expressed any view about the merits of the counter-claim itself and the Court will be free to adjudicate the same according to law in course of the trial. We also keep it on record that no application was needed for obtaining prior leave for filing counter-claim. The impugned order is set aside. The trial Court is directed to treat the application under Order 8 Rule 9 as a counter-claim of the defendant and deal with the same, according to law.

The Revisional application is thus disposed of.

There will be order as to costs.

S.K. Hazari, J.

5. I Agree.