(2009) 11 P&H CK 0175

In the Punjab And Haryana At Chandigarh

Jagjit Singh APPELLANT

Vs

Krishan Chand and Brothers Commission Agents RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6C
Constitution of India, 1950 — Article 227

Citation : (2010) 158 PLR 593

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—In this petition filed under Article 227 of the Constitution of India by the petitioner-plaintiff, the prayer is for setting aside the order dated 5.10.2006 whereby his application under Order 8 Rule 6C of the Code of Civil Procedure, (in short "the Code") for exclusion of the counter-claim filed by the respondent defendant was dismissed by the Civil Judge (Junior Division), Patiala.

2. Briefly, the facts of the case are that the plaintiff filed a suit for recovery of Rs. 1,62,870/-, out of which, an amount of Rs. 1,05,760/- was on account of sale price of wheat and the remaining on account of interest accrued thereon. The defendant filed written statement controverting the allegations of the plaintiff and setting up a counterclaim seeking recovery of Rs. 3,30,731/-, i.e. Rs. 2,15,811/- as principal, and Rs. 1,14,920/- as interest. It was pleaded in the counter-claim that the plaintiff had taken paddy from the Government Agency and the defendant stood surety for him. The plaintiff took the sheller of the defendant on lease, for the years 2000-2001 and 2001-2002. The plaintiff failed to supply rice against the paddy received and a big quantity of rice i.e. 97 quintals and 91 Kgs remained undelivered to the Punjab Agro Industries Corporation Limited, Punjab, Patiala, now known as Government Agency, Punjab Agro Food Grains Corporation Limited, Punjab, Patiala. It was further pleaded that the defendant being surety of the plaintiff was under legal obligation and,

thus, deposited vide three cheques a sum of Rs. 1937/- each with the Market Committee, Patiala as a penalty imposed on the plaintiff and also paid a sum of Rs. 2,10,000/- to the Government Agency, on behalf of the plaintiff, through cheque dated 1.10.2002. Though the plaintiff in order to pay back the amount of Rs. 2,10,000/- issued a cheque dated 3.11.2003, but the said cheque was dishonoured by the bank as the payment thereof had been got stopped by the payer-plaintiff.

3. In the reply filed by the defendant to the application of the plaintiff for exclusion of counter-claim made by it, it was stated that as the plaintiff had taken the price of the wheat sold through it on 17.4.2002, he did not deduct any amount from the cheque of Rs. 2,10,000/- and issued cheque No. 089131 dated 3.11.2003 of Rs. 2,10,000/- and the suit has been filed with a view to putting pressure on the defendant.

4. The trial court, as noticed above, did not accept the prayer made in the application moved by the plaintiff and consequently, dismissed the same by the impugned order.

5. I have heard learned Counsel for the parties and have perused the record with their assistance.

6. Learned Counsel for the petitioner submitted that under Rule 6C of Order 8 of the Code, the counter-claim set up by the defendant is required to be excluded for the reason that the evidence and the witnesses to be examined are not common and, therefore, counter-claim itself is not maintainable. Learned Counsel further submitted that in case the counter-claim set up by the defendant is not excluded then in that situation, it shall delay the trial of the suit and the defendant has a right to file a separate suit in respect of the amount claimed in the counter-claim.

7. In support of the aforesaid submissions, the learned Counsel for the petitioner placed reliance on Kulwant Singh v. Gurcharan Singh and Ors. 2003 (1) All ILLR 715; Raja Bhupendra Narain Singha Bahadur Vs. Maharaj Bahadur Singh and Others, .

8. Controverting the submission of the learned Counsel for the petitioner, it was argued on behalf of the respondent that the suit is for recovery in which counter-claim has been raised to recover the amount from the plaintiff. According to the learned Counsel, it is Rule 6A of Order 8 of the Code which applies and Rule 6C thereof has no applicability to the facts of the present case. In the end, learned Counsel supported the impugned order passed by the trial court.

9. Rule 6A and Rule 6C of Order 8 of the Code, which are relevant for the decision of the present case read thus:

[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 counterclaim.

(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.

6C. Exclusion of counter-claim:

Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counterclaim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.

10. Hon''ble Supreme Court while interpreting Rule 6A of Order 8 in Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others, Lald down that a defendant has been conferred a right to set up a counter-claim against the claim raised by the plaintiff. However, the only embargo which has been imposed by the aforesaid Rule is that the cause of action must have accrued to the defendant before he has delivered his defence and the limitation period as prescribed under the Limitation Act, 1963 has not expired.

11. The provision of Rule 6C of Order 8, however, recognizes the right of the plaintiff to apply to the civil court for exclusion of the counter-claim made by the defendant and to get his counter-claim settled in an independent suit. The court is clothed with adequate power to exclude the counter-claim and direct the defendant to file an independent suit in cases where the court comes to the conclusion that it would be unfair or where it causes complications and would result in prolonging the trial. Rule 6C does not enumerate or specify the circumstances or the grounds for exclusion of counterclaim. The trial court is required to exercise discretion judiciously and the court must have weighty grounds to exclude the counter-claim before it can disallow the defendant his statutory right to file a counter-claim. The court while exercising discretion judiciously shall keep in mind that where the counter-claim might cause undue

delay in the trial, or the counter-claim is vague and not specific or which may cause inconvenience to the party, may order for its exclusion from the trial.

12. Keeping in view the aforesaid interpretation, the plea of the petitioner that the counter-claim set up by the defendant should be excluded, cannot be accepted. In the present case, the plaintiff has filed the suit for recovery of Rs. 1,62,870/-, out of which Rs. 1,05,760/- was the actual amount of sale price of wheat crop and the balance was on account of interest which had accrued thereon. The defendant while filing written statement also preferred a counterclaim for recovery of Rs. 3,30,731/- from the plaintiff, i.e. a sum of Rs. 2.15,811/- as principal and Rs. l,14,920/- as interest. The defendant claimed that the plaintiff had taken paddy from the Government Agency for which it (defendant) stood surety for him. Since the plaintiff failed to supply the rice against the paddy received, the Market Committee, Patiala imposed penalty on him and the defendant had also to pay a sum of Rs. 2,10,000/- to the Government Agency on behalf of the plaintiff through cheque dated 1.10.2002.

13. In the facts and circumstances, as noticed above, the parameters Lald down for exclusion of the counter-claim are not satisfied in the present case. The case of the respondent-defendant is governed by Rule 6A and not Rule 6C of Order 8 of the Code as has been canvassed by the plaintiff-petitioner.

14. In all fairness to the learned Counsel for the petitioner, reference is made to the case law relied upon by him. In Kulwant Singh''s case (supra), the plaintiff had filed an application for exclusion of counter-claim set up by one defendant against co-defendant. The trial court after considering the scope of Rule 6C, arrived at the conclusion that the counter-claim set up by the defendant against co-defendant should be excluded. The said order was upheld by the High Court and it was held that the counter-claim would unnecessarily cause embarrassment, complication and confusion and had rightly been ordered to be excluded under Rule 6C by the trial court. The facts of the cited case being different from the facts of the present case, the same do not help the petitioner.

15. Rules 6A and 6C were introduced in Order 8 of the Code by the Amendment Act 104 of 1976, w.e.f. 1.2.1977 and as such the judgment rendered in Bhupendra Narain Singha Bahadur''s case (supra), has no applicability. Further, the facts of the said case being different from the facts of the case in hand, the said judgment also is of no assistance to the petitioner. The judgments relied upon by the learned Counsel for the petitioner thus, do not advance the case of the petitioner. In view of the above, no illegality or perversity could be noticed in the order impugned herein. Accordingly, the revision petition is dismissed. No costs.

