

(2008) 09 UK CK 0023
In the Uttarakhand High Court

Jayanti Prasad Nautiyal

APPELLANT

Vs

Kamla Nand Bahuguna and Another

RESPONDENT

Date of Decision : 29-09-2008

Acts Referred:

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

Citation : AIR 2009 Utt 26 : (2009) 1 UC 233 : (2008) 2 UD 454 : (2006) 2 UD 454

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.—By the impugned order dated 25-7-2008 passed by the learned District Judge, Dehradun, the revision petition filed by respondent No. 1 against the order dated 23-4-2008 passed by the Trial Judge was allowed. Vide the order dated 23-4-2008, the learned Trial Court had allowed the petitioner's application for amendment of the written statement to incorporate the petitioner's counter-claim in the written statement. The learned District Judge while setting aside the aforesaid order rejected the said application.

2. Some relevant and important dates and events may be noticed. The suit was filed on 12-11-2002. The original written statement was filed on 29-11-2003. The issues were framed on 13-8-2007 and the evidence of the plaintiff by way of affidavits was filed on 30-8-2007. The application for amendment of written statement under Order 6 Rule 16 C.P.C. to incorporate the counter claim was filed on 5-3-2008.

3. First and foremost, the question which arises for consideration in this case is whether it is open under law to a defendant to file a counter-claim by way of and through an amendment of a written statement. In other words, is it permissible under law, after a written statement has originally been filed, to amend the same subsequently for incorporating a counter claim therein?

4. In the case of Ramesh Chand Ardawatiya Vs. Anil Panjwani, , it has clearly been held by their Lordships of the Supreme Court that a counter claim can be preferred by a defendant in a suit by way of amendment incorporated in the original written statement subject to the leave of the Court. The following observations are pertinent and I quote:

28. Looking to the scheme of Order 8 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 counter-claim may be preferred by way of amendment incorporated subject to the leave of Court in a written statement already filed. Thirdly, a counter claim may be filed by way of 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 6 Rule 17 CPC if sought to be introduced by way of amendment, or subject to exercise of discretion conferred on the Court under Order 8 Rule 9 CPC if sought to be placed on record by way of subsequent pleading.

5. In the case of Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others, while dealing with the same question with particular reference to Rule 6-A of Order 8 CPC, their Lordship's of the Supreme Court held as under:

15. The next point that remains to be considered is whether Rule 6A of Order VIII Civil P.C. bars the filing of a counter claim after the filing of a written statement. This point need not detain us long, for Rule 6A(1) does not, on the face of it, bar the filing of a counter claim by the defendant after he had filed the written statement. What is laid down under Rule 6-A(1) is that a counter claim can be filed, provided the cause of action had accrued to the defendant before the defendant had 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. The High Court, in our opinion, has misread and misunderstood the provision of Rule 6A(1) in holding that as the appellants had filed the counter claim after the filing of the written statements, the counter claim was not maintainable. The finding of the High Court does not get any support from Rule 6A(1), Civil P.C. As the cause of action for the counter claim had arisen before the filing of the written statement, the counter claim was, therefore, quite maintainable. Under Article 113, Limitation Act, 1963, the period of limitation of three years from the date the right to sue accrues, has been provided for any suit for which no period of limitation is provided elsewhere in the Schedule. It is not disputed that a counter claim, which is treated as a suit u/s 3(2)(b), Limitation Act, had been filed by the appellants within three years from the date of accrual to them of the right to sue. The learned District Judge and the High Court were wrong in dismissing the counter claim.

6. By a clear pronouncement of law, therefore, the Supreme Court has categorically held that it is permissible under law to amend a written statement for incorporating a counter claim. The issue therefore, is no more *res Integra*. The issue which now arises for consideration In this case is whether in view of the facts and circumstances of the case, the application filed by the petitioner under Rule 6 Rule 17 should have been allowed or not. Even though undisputedly the application was delayed and was filed almost 4 1/2 years after the filing of the original written statement and even though the petitioner has not advanced a plausible explanation, I feel that in the interest of justice, the application should be allowed and the petitioner be permitted to incorporate counter claim by way of amendment of the original written statement subject of course to respondent No. 1 being compensated by heavy costs.

7. The petition accordingly is allowed. The impugned order is set aside. The petitioner is permitted to file the amended written statement by and after incorporating the counter claim on the following conditions:

(i) The amended written statement shall be filed in the Trial Court within two weeks from today.

(ii) The petitioner shall pay to respondent No. 1 costs of Rs. 10,000/- within the same period of two weeks.

(iii) The issue of limitation in terms of Section 3(2)(b)(ii) of the limitation Act shall be left open to be decided by the learned Trial Court with respect to the fact whether the counter claim is barred by limitation or not.

(iv) The suit has already been protracted unduly. I direct that the learned Trial Court shall take all steps for expeditious disposal of the suit.