
(2014) 07 MP CK 0216
In the Madhya Pradesh High Court
Case No : Writ Petition No. 484/2013

Kamma Bai

APPELLANT

Vs

Gulab Bai

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

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

Citation : (2014) 07 MP CK 0216

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : D.D. Bansal, Advocate for the Appellant; Amit Lahoti, Advocate for the Respondent

Final Decision : Allowed

Judgement

Rohit Arya, J.—The short controversy involved in this petition relates to sustainability of the order passed by the Trial Court on 2/1/2013 in Civil Suit No. 91-A/2011.

2. Facts necessary for disposal of this petition are in narrow compass. Plaintiff/respondent no. 1 has filed a suit for declaration and permanent injunction. Defendant no. 6 after filing written statement filed an application under Order VI Rule 17 of CPC seeking amendment in the written statement. Trial Court has turned down the aforesaid amendment on the premise that the claim made in the counter claim is qua co-defendants and, therefore, said amendment is not maintainable in the light of Order VIII Rule 6A of CPC. Counter claim is maintainable only against the relief claimed by the plaintiff. On the aforesaid reasonings, the Trial Court has non-suited defendant no. 6 in the matter of her counter claim.

3. Learned counsel for the petitioner during the course of arguments submitted that though the legal position as regards tenability of counter claim qua co-defendants is no more res integra and is governed by the judgment rendered by

this Court in number of decisions, however, learned counsel relied upon the judgment rendered by the Hon''ble Supreme Court in the matter of Rohit Singh and Others Vs. State of Bihar (Now State of Jharkhand) and Others, wherein learned counsel points out paragraph 21 to assert that if counter claim is against the co-defendants and plaintiff also, in that eventuality the counter claim cannot be rejected and then the same need to be addressed upon on merits.

4. Counsel for respondents no. 2 to 5 does not dispute the aforesaid proposition based upon the aforesaid judgment in the matter of Rohit Singh (supra), however, submits that in fact the factual matrix of the case in hand is clearly distinguishable to the set of facts before the Hon''ble Supreme Court. He further submits that even otherwise a careful perusal of the judgment, makes it clear that the same cannot be said to have any assistance to the petitioner.

5. Be that as it may. Without commenting upon the rival submissions of the parties, this Court thinks it apposite to dispose of this petition with direction to the Trial Court to permit the petitioner to amend her written statement and after framing of issues, to allow the parties to lead evidence, however, the Trial Court shall address upon the sustainability of counter claim on its own merits at the time of final hearing in accordance with law.

6. Trial Court is expected to expedite disposal of the suit as early as possible not later than one year.

7. With the aforesaid observations, writ petition is allowed.