

(2001) 05 CHH CK 0009
In the Chhattisgarh High Court
Case No : Civil Revision No. 1000 of 2000

K.C. Bharadwaj

APPELLANT

Vs

Jaibhagwan Agrawal

RESPONDENT

Date of Decision : 01-05-2001

Acts Referred:

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

Citation : (2001) 2 CGLJ 189 : (2001) 5 MPHT 43 : (2001) 2 MPJR 63

Hon'ble Judges : R.S. Garg, J

Bench : Division Bench

Advocate : Sunil Sinha, for the Appellant; Awadh Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—The applicant/defendant being aggrieved by the order dated 8-4-2000 passed in Civil Suit No. 1-B/94 by the learned District Judge, Ambikapur, rejecting defendant-applicant's counter claim submitted under Order 8 Rule 6-A holding that the counter claim is ex facie barred by limitation, therefore the same could not be allowed.

2. The plaintiff had filed the suit on 12-1-1994 seeking certain decree in his favour. On 12-8-1994 the defendant filed his written statement and thereafter on 4-5-1998 had made an application under Order 6 Rule 17 of the Code of Civil Procedure. By the said application the applicant-defendant wanted to incorporate a counter-claim. The said application was rejected by the lower Court therefore the defendant came to the High Court of Madhya Pradesh in Civil Revision No. 1189/98, The petition came up for hearing on 24-7-1998 and the High Court while maintaining the order passed by the trial Court granted opportunity to the defendant to make a duly constituted application for submitting counter-claim in accordance with the judgment of the Supreme Court in that matter of Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others, .

3. Armed with the order of the High Court the defendant-applicant filed the counter-claim on 5-8-1998. In the said counter claim, in paragraph 4 the defendant-applicant contended that the cause of action accrued in favour of the applicant on 10-1-1994. Learned trial Court held that in view of the pleadings raised and provisions of the Limitation Act if an independent suit was filed in the year 1998, on a cause of action dated 10-1-1994 then the suit on the date of the counter claim would have been barred by limitation, it accordingly rejected the said counter claim.

4. Being aggrieved by the said order the applicant has come to this Court.

5. Learned counsel for the applicant-defendant Shri Sunil Sinha submits that a bare perusal of Rule 6-A to 6-C Order 8 of the CPC would clearly show that a counter claim can always be filed by a defendant if the cause of action accrues in his favour either before filing of the suit or even after filing of the suit but before raising defences, Placing reliance on the judgment of the Supreme Court in the matter of Smt. Shanti Rani Das Dewanjee Vs. Dinesh Chandra Day (dead) by LRs., learned counsel for the applicant submits that the cause of action being bundle of facts, this question cannot be decided at this stage therefore the Court-below was unjustified in rejecting the counter claim. He further submits that in the matter of Mahendra Kumar (Supra) the Supreme Court has observed that if cause of action accrues in favour of the defendant before filing of the suit or after filing of the suit but before filing of the written statement then even after filing of the written statement the defendant would be entitled to bring on record his counter claim.

6. There is no dispute about the legal position. The counter claim would be filed by the defendant if he feels that the plaintiff has filed a vexatious suit or the defendant himself is entitled to some decree in his favour. According to the scheme of the Code of Civil Procedure, especially of Rule 6-A to 6-C of Order 8, a defendant is entitled to file counter claim if the cause of action accrues in his favour before the date of filing of the plaint. During the pendency of the suit, even if a cause of action accrues in favour of the defendant he can still file a counter claim on such a cause of action provided up to the date he has not filed the written statements or the date of filing of the written statement has been extended time to time by the Court. Once the defendant files his written statements, then, on cause of action after filing of the written statements he cannot submit his counter claim. If for some reason or other the defendant who could not file his counter claim before submission of the written statement, he would still be entitled to file his counter claim if he satisfy the Court that the cause of action for filing the counter claim accrued in his favour either before filing of the suit or subsequent to filing of the suit but before filing of his written statement or submission of the defence. In the matter of Shanti Rani (Supra) the Supreme Court has simply said that in view of the chequered pleadings of the parties the question of limitation could not be decided at preliminary stage but was required to be kept open and was required to be decided at the time of final

hearing. In the said matter the Supreme Court did not say that the counter claim which in the other terms is a plaint or is to be treated as counter suit if is prima facie barred by limitation on the pleadings or on the saying of the defendant himself then the question must be kept open.

7. In the present matter the defendant has clearly stated in para 4 of his counter claim that the cause of action accrued in his favour on 10-1-1994. i.e., two days before filing of the suit by the present plaintiff. Obviously, if the cause of action accrued in favour of the defendant before institution of the suit he could submit a counter claim in accordance with law. But at the same time, a Court has to keep in mind that if on the very same cause of action a suit is filed on the date when the counter claim is submitted, whether such a suit would be within limitation or not.

8. Undisputedly, on a cause of action accruing in favour of the defendant on 10-1-1994 a suit could be filed on or before 10-1-1997. Had the plaintiff not filed the suit then on 5-8-1998, the defendant's suit based on a cause of action dated 10-1-1994 would have been barred by limitation. In the present case the defendant has made a categorical statement in para 4 of the counter claim that the cause of action accrued in his favour on 10-1-1994. It is trite law that if on the pleadings of a party the suit is barred by limitation then there is no need for the Court to proceed with the suit or decide it in a cerimonious manner. On the defendant's own showing that the cause of action accrued in his favour on 10-1-1994 it cannot be held that the counter claim submitted on 5-8-1998 would be within limitation.

9. The Court-below was certainly justified in rejecting the counter claim. I find no reason to interfere. The revision is dismissed.