

(1972) 03 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1393 of 1971

Khushi Ram

APPELLANT

Vs

Ram Chand

RESPONDENT

Date of Decision : 02-03-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Limitation Act, 1963 — Section 3(2)

Citation : AIR 1972 P&H 303

Hon'ble Judges : Prem Chand Pandit, J

Bench : Single Bench

Judgement

1. On 6th October, 1969, Ram Chand brought a suit for the recovery of Rs.6129.70 against Khushi Ram on the basis of a writing in the Bahi. The defendant filed his written statement on 5th February, 1970, in which he denied the said claim. The case was then tried and, ultimately, when the stage of arguments came, the defendant moved an application on 26th November, 1971, for the amendment of his written statement. By the said amendment, he wanted to claim a set off Rs. 2158.42 from the plaintiff on account of the goods supplied to firm Kundan Lal Ram Chand. This Ram Chand, according to the defendant was the plaintiff and he had also stood as surety for the payment of the said amount.

2. This application was contested by the plaintiff and then rejected by the trial Judge by means of his order dated 6th December, 1971. Against this, the present revision petition has been filed by the defendant.

3. The trial Judge, in the impugned order had given a number of reasons for rejecting the defendant's application. One of them being, that he was not satisfied with the reason giving by the defendant for making that application at such a belated stage. The defendant had mentioned that he was ill and could not fully instruct his counsel, when the latter filed the written statement on his behalf. While rejecting this reason, the learned Judge observed that it could not be believed that the plea of set-off could not be taken because the defendant

was ill and, therefore, could not properly instruct his counsel.

4. It is undisputed that the set-off has to be claimed under Order 8, Rule 6, Code of Civil Procedure. The relevant part of this rule reads:--

"6. (1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff not exceeding the pecuniary limits of the jurisdiction of the Court and both parties fill the same character as they fill in the plaintiff's suit the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.

* * * *".

5. It would be seen from this provision that if the defendant wants to claim a set-off, he has to do so at the first hearing of the suit, but not afterwards, unless permitted by the Court. This was admittedly, not done in the instant case. For claiming the set-off subsequently, i.e. after the first hearing of the suit, he has to take the permission of the Court. For that purpose, the ground taken by the defendant was that he was ill and could not properly instruct his counsel. This reason, as I have already said, did not appeal to the trial Judge and he rejected the same. It will be observed from the phraseology used in Rule 6 of Order 8, that the legislature is quite particular that whosoever wishes to claim a set-off, he must do so when he appears for the first time before the Court in response to the notice issued to him. The rule is emphatic that it cannot be done afterwards, unless the Court permits him to do so. One of the reasons for this seems to be that in Section 3(2)(b) of the Limitation Act, 1963, it had been stated that any claim by way of a set-off will be treated as a separate suit and will be deemed to have been instituted on the same date as the suit, in which the set-off is pleaded. In other words, it means that a claim, which is time-barred on the first hearing of the suit when the set-off is to be claimed by presenting a written statement containing the particulars of the debt sought to be set-off, is brought within limitation, if it was so on the date when the suit was filed, in which the set-off is being claimed. To put it differently, the limitation for the claim of a set-off is, in a way, extended by Section 3(2)(b) of the Limitation Act. In other words, a sort of concession is given to the person claiming the set-off and that being so, he has to be vigilant and fully comply with the requirements of the law in order to earn this benefit. He cannot be indolent and allowed a further concession for claiming the set-off after the first date of hearing without proving that there was really some compelling reason which prevented him from doing so at the relevant time. That explains why in the Code of Civil Procedure, it is said that such a claim must be made at the first hearing of the suit and not afterwards. If in a particular case, a defendant has not put in his claim of set-off on the first date of hearing in the suit he has to make a very strong case for the condonation of the delay and satisfy the Court that there was very valid ground for not doing so. The position is somewhat different under the provisions of Order 6, Rule 17,

Code of Civil Procedure. Under that rule, the Court can allow a party to alter or amend his pleadings at any stage of the proceedings in the suit. Under O. 8 Rule 6 however, there is a clear limitation prescribed in the statute that the claim regarding the set-off has to be made at the first hearing of the suit and not afterwards, unless permitted by the Court. It is, therefore, that one has to be careful in finding out whether a really valid ground has been made out by the defendant for not claiming a set-off at the proper time. In the instant case, the petitioner had pleaded that he was ill and could not fully instruct his counsel when he filed the written statement on 5th February, 1970. The reason given, in any case, shows that the defendant was not in such a condition that he could not give any instructions to his counsel. The fact remains that he did instruct his counsel when the latter filed the written statement and if he could mention other things to him, which find place in the written statement, it is difficult to believe that he could not point out this particular matter to him, especially when he was claiming an amount of over Rs.20000/- from the plaintiff, who had filed a suit for the recovery of Rs.6000/- and odd against him. In these circumstances, it is therefore, not possible to hold that the learned Judge, while rejecting the reason given by the defendant for the delay, had acted in a perverse manner in the exercise of his discretion given to him under Order 8, Rule 6, CPC for extending the period for filing the claim of set-off.

6. It was submitted by the learned counsel that the petitioner could amend his written statement only under the provisions of Order 6, Rule 17, Code of Civil Procedure, and thereunder, there was no limitation for filing such an application and, consequently, even when the petitioner made his application at the time when the arguments stage had arrived in the case, his prayer should not have been refused on the ground of delay.

7. The petitioner had neither mentioned Order 8, Rule 6, nor Order 6, Rule 17, Code of Civil Procedure, in his application. Counsel for the respondent concedes that the application had to be made under both these provisions. That being so, the said provisions have to be taken into consideration before granting the application. It is true that under Order 6, Rule 17, the Court can permit a party to alter or amend his pleadings at any stage of the proceedings but under Order 8, Rule 6, the Court has to bear in mind that the claim of set-off has to be made at the first hearing of the suit and not afterwards unless permitted by the Court. Even under Order 6, Rule 17 some other conditions also have to be satisfied before the Court can allow the amendment at any stage of the suit. Under Order 8, Rule 6, for the reasons already mentioned above, the Court has to be completely satisfied that there was a valid ground for the delay in not claiming the set-off at the first hearing of the suit and if he is not so satisfied, he is fully entitled to reject the application even bearing in mind the principles laid down in Order 6, Rule 17, Code of Civil Procedure.

8. In view of what I have said above, I would dismiss this petition but leave the parties to bear their own costs throughout.

9. Petition dismissed.