

(2007) 08 AHC CK 0126

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 41025 of 2007

Krishi Utpadan Mandi Samiti Shahpur, Muzaffar Nagar and Anr.	APPELLANT
Vs	
Kiran Securities Services, Muzaffar Nagar	RESPONDENT

Date of Decision : 30-08-2007

Acts Referred:

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

Citation : (2007) 08 AHC CK 0126

Hon'ble Judges : Tarun Agarwala, J

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Sri B.D. Madhayan, the learned Senior Counsel for the petitioner.

2. The plaintiff filed a suit for recovery of money from the defendants. This suit was filed in the year 1997. The defendants resisted the suit and filed their written statement alleging that no amount was due or payable to them. In paragraph 25 of the written statement the defendants alleged, that on account of a theft, the defendants had suffered a loss of Rs. 17,100 and that the said amount was liable to be adjusted from any alleged amount sought to be recovered from the plaintiff. This written statement was filed on 721998. After 10 years an amendment application under Order VI, Rule 17 of the C.P.C. was filed praying for amendment of the written statement and for incorporation of paragraphs 25A, 25B and 25C. In these paragraphs the defendants has sought a counter claim/set off for adjustment of Rs. 17,100 and further prayed for payment of Court fee on it. This amendment application was opposed by the plaintiff and ultimately the trial Court rejected the amendment application. The defendants, being aggrieved filed a revision which was also rejected. Consequently the writ petition.

3. The learned Counsel for the petitioner submitted that plea of set off had already been taken in paragraph 25 of the written statement and therefore, no new facts were being brought into existence in the written statement. The

amendment sought was bona fide to incorporate the plea of payment of Court fee. Consequently, the plea of set off should have been allowed by the Court below and the defendants should have been permitted to pay the Court fee. The learned Counsel submitted that the Court below should have allowed the amendment and, in support of his submissions the learned Counsel placed reliance upon the decisions of the Supreme Court in *Usha Balasaheb Swami & Ors. v. Kiran Appaso Swami & Ors.*, 2007 AIAR (Civil) 445; *State Bank of Hyderabad v. Town Municipal Council*, 2007 (1) SCCD 424 (SC), as well as *Baldev Singh & Ors. v. Manohar Singh & Anr.*, 2006 (64) ALR 895.

4. In my view the decisions cited by the learned Counsel for the petitioner are distinguishable. In the present case, a plea of set off has been taken by the defendants in the amendment application. The plea of set off is permitted by the Court under Order VIII, Rule 6 of the C.P.C. which reads as under :

76. Particulars of setoff to be given in written statement. (1) Where in a suit for the recovery of money the defendant claims to setoff against the plaintiffs 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 plaintiffs 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.

(2) Effect of setoff. The written statement shall have the same effect as a plaint in a crosssuit so as to enable the Court to pronounce a final judgment in respect of both the original claim and of the setoff; but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of setoff.

5. The set off is clearly permitted to be incorporated in the written statement at the first hearing of the suit and not afterwards unless permitted by the Court. The effect of the set off, if permitted is, like a cross suit where the defendant is permitted to claim a set off in his written statement against the claim of the plaintiff. Order VI, Rule 17 of the C.P.C. permits a party to amend the pleadings. Order VI, Rule 17 of the C.P.C. reads as under :

17. Amendment of pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

6. From a bare perusal of Order VI, Rule 17 of the C.P.C. it is clear that the Court is conferred with the power, at any stage of the proceedings, to allow alteration

and amendments of the pleadings, if the Court finds and is of the view that such amendment is necessary for determining the real controversy involved between the parties. It is equally well settled that the Court should be liberal in granting the prayer for amendment of the pleadings unless serious injustice or irreparable loss is caused to the other side but a prayer for amendment of the plaint and a prayer for amendment of the written statement stands on a different footing altogether. In the present case a plea of set off is being raised by the defendants which brings a new cause of action into existence. It is a new claim that is being brought into the picture by the defendant in his written statement and, if allowed, would partake the nature of a cross suit which claim can only be filed within the statutory period of limitation. A counter claim or claim of set off can only be filed done within the period of limitation. It is like a suit for recovery which can only be filed within three years from the date of the cause of action. In the present case, the cause of action arose as far back as in the year 1997 when the suit was filed and again in the year 1998 when the defendants filed the written statement. The present amendment application was filed by the defendant on 143 2007 after 10 years. Clearly, the claim of set off was barred by limitation. The Court below rejected the amendment application on the ground that the defendants were prolonging the proceedings and that the application was not bona fide. In my opinion, the approach adopted by the lower appellate Court was correct which requires no interference in a writ jurisdiction. There is no palpable error in the order of the Court below. In the opinion of the Court the application was also barred by limitation.

7. The writ petition is dismissed.