
(1960) 07 MP CK 0010
In the Madhya Pradesh High Court
Case No : C.R. No. 17 of 1960

M. Bhagwati Prasad of Indore

APPELLANT

Vs

Hukumchand Mills Ltd., Indore

RESPONDENT

Date of Decision : 21-07-1960

Acts Referred:

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

Citation : (1961) JLJ 79 : (1961) MPLJ 272

Hon'ble Judges : H.R. Krishnan, J

Bench : Single Bench

Advocate : M.B. Rege, for the Appellant;

Final Decision : Dismissed

Judgement

H.R. Krishnan, J.

This is really a case regarding the mechanics of the defendant's prosecuting his claim against the plaintiff with minimum inconvenience rather than about the jurisdiction of the Court and the rights of parties. On account of certain transactions, in particular two contracts, the plaintiff made a claim which has been countered by the defendant by a claim of set-off on equitable grounds, based on a large number of transactions spread over a number of years. The trial Court held that the defendant's claim was for an unliquidated sum of money, and in the circumstances of the case, would require an enquiry to elaborate and confusing to be held in course of the present suit. So it refused to entertain the claim as one for set-off and left it to the defendant to bring a separate suit.

The defendant has urged in revision that a set-off for an unliquidated claim ascertainable in the instant suit has been recognised as a set-off on equitable grounds broadly analogous to the legal set-off mentioned in Order 8, rule 6, Civil Procedure Code. The Court had jurisdiction to consider it in the current suit itself; by refusing to exercise it, the Court had driven him to the cost and inconvenience of having to do his work twice over. The ruling reported in Kasturi and Sons

(Private) Ltd. Vs. N. Salivateeswaran and Another, has been cited as authority for the view that the failure of a Court to exercise its jurisdiction and deal with a matter can be questioned in course of a civil revision, as it is a jurisdictional point. But that ruling would apply only when the Court has no choice or discretion to refuse to exercise the jurisdiction. The ruling reported in *Kanhayalal v. Laxminarayan* 1969 MPLJ 517 has been cited as an authority on the existence of an equitable right to set-off in circumstances that may not fall quite within the four corners of Order 8, rule 6. There is no doubt about this proposition, but the question here is in these circumstances the defendant should be allowed to prosecute his claim in the instant suit itself.

In case of an equitable set-off the principle contained in Order 8, rule 6 apply not strictly but only by analogy. Therefore the Court's discretion in this regard is wider than in a case falling within the terms of that rule. Certainly that does not mean that the Court can do what it likes. Here also it should consider the question of convenience: if for example, the claim of the defendant is equitable set-off relates to transactions that can be suitably investigated in the suit itself, then even if it is a claim for unliquidated sum it should be taken up. If on the other hand, the defendant's version would involve an elaborate and complicated enquiry unconnected with, and over a period different from the version of the plaintiff, it is better to leave this to a fresh suit by the defendant, than confuse the issues in the instant suit.

The question is not one of the party's right or Court's jurisdiction. It is ultimately one regarding the convenience, and of the mechanics of the litigation. In either event the defendant will have to pay court-fee, produce his documents and call his witnesses. If there is a separate suit, the documents will have to be filed in duplicate with certified copies and the witnesses may have to come twice, once in each case. This is additional trouble, and other things being same, should be spared. But if the process of saving a party from this, will lead to confusion and delay, out of proportion to the saving, it would be proper to direct the defendant to sue separately. This is the position here.

The application is accordingly dismissed summarily.