
(1997) 01 AHC CK 0048

In the Allahabad High Court

Case No : First Appeal From Order No. 1143 of 1995

Maharaja Refractories (P.) Ltd.

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 01-01-1997

Acts Referred:

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

Citation : (1997) 89 CompCas 610

Hon'ble Judges : Om Prakash, J;B.K. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant.
2. This appeal is directed against the impugned judgment dated October 31, 1995, passed by the learned First Upper Civil Judge (Senior Division), Ghaziabad.
3. The suit giving rise to the impugned order was filed by the respondent against the appellants for recovery of Rs. 9 lakhs. Counsel for the appellants submits that a counter-claim was filed by the appellants seeking a declaration that the appellants were entitled to recover a sum of Rs. 5 lakhs from the respondent. The appellants filed court-fee only of Rs. 200 which is payable in a suit for declaration only.
4. The trial court held that in the counter-claim adequate court-fee was not paid. The view taken by the trial court was that though the appellants seemingly sought a relief of declaration, in reality, the appellants also sought a set off of Rs. 5 lakhs and on that court-fee was payable, which the appellants failed to pay. We see no error in the view taken by the trial court that the intention of the appellants behind seeking the declaration is that they are entitled to claim the set off of Rs. 5 lakhs from the plaintiff and if that is so, court-fee on the claim of set off is required to be paid by the appellants.

5. Order 8, Rule 6(1) of the Code of Civil Procedure, 1908 (briefly, "the CPC"), is as under :

"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."

6. Sub-rule (2) of Rule 6, Order 8 of the Civil Procedure Code, 1908, further provides :

"The written statement shall have the same effect as a plaint in a cross-suit so as to enable the court to pronounce a final judgment in respect of both of the original claim and of the set off."

7. It is only under Order 8, Rule 6 of the Civil Procedure Code, 1908, that a defendant may claim a set off of an amount which is due to him from the plaintiff and there is no provision for seeking a declaration simpliciter by way of counter-claim. Under Order 8, Rule 6, there will be no difference in the nature of claim of the set off and in the nature of the claim, set up in the plaint. Both will be on an equal footing. A decision on a claim of set off is as if that claim was decided under the plaint if that were filed by the defendant as a plaintiff. To avoid multiplicity of suits, the Civil Procedure Code, 1908, provides for the remedy of set off. As a plaintiff is required to pay court-fee on the relief sought by him, similarly a defendant is required to pay court fee on the claim of set off, because the claim of set off is decided as effectively as the claim set up in the plaint.

8. If the appellants want to seek a declaration simpliciter that they are entitled to the amount of Rs. 5 lakhs from the plaintiff without claiming set off thereof, then they may file a suit against the defendant and there is no provision to enable the appellants to seek a declaration to this effect in the garb of the counter-claim.

9. For the reasons, the appeal fails and is dismissed.