
(2001) 08 MP CK 0014
In the Madhya Pradesh High Court
Case No : C.R. No. 516 of 2001 (J)

M/s Badwal and Associates and Others	APPELLANT
Vs	
M/s Novopan Industries Ltd. and Others	RESPONDENT

Date of Decision : 02-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2002) 2 MPJR 337

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : Manish Saini, for the Appellant; K. Menon, for the Respondent

Final Decision : Allowed

Judgement

S.C. Pandey, J.

This revision is directed against the order dated 9.12.2000 passed by XIth Addl. District Judge, Jabalpur in Civil Suit No. 1-B/1999.

It appears that the petitioners had raised an objection challenging the counter claim filed by the respondents in their written statement. In the written statement a claim for recovery of Rs. 97,299.64 paisa was made by way of counter claim against the petitioners. Recovery of that amount was by way of damage. It is alleged specifically in paragraph 3 of the counter claim that cause of action for recovery of damages arose on 15.3.96. The counter claim was filed on 22.8.2000.

Order VIII Rule 6-A of the CPC permits a defendant to file a counter claim. The filing of a counter claim as per rule 6-A sub-rule (2) is that it shall be treated as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit both on original claim and on counter claim. The plaintiff has to file a written statement in answer to counter claim of the defendant within the period fixed by the Court. Sub-rule (4) of Rule 6-A specifically states that the counter claim shall be treated as plaint and governed by the rules applicable to the plaints. It is

obvious that if sub-rule (4) of Order VIII Rule 6-A of CPC applies to a counter claim, then all rules relating to plaints in order VII are automatically attracted. Order VII Rule 10 and 11 may also be attracted in a given case. Order VII Rule 10 provides for rejection of plaints on one and more grounds mentioned in it. If a suit is barred by time, then Order VII Rule 11 would be attracted because the plaint shall be deemed to be barred u/s 3 of the Limitation Act.

In this view of the matter, the petitioners were right in applying under Order VII Rule 11 CPC. The learned trial Judge was not right in holding that it is necessary to file a written statement in reply to a counter claim for raising an objection under Order VII Rule 11 of CPC. If on the allegations made in the plaint, it is liable to be rejected, then the court can suo motu dismiss a plaint. In fact it is the duty of the Court to see whether the plaint as framed and filed is maintainable in the eyes of law. It is not the burden of the party, but the burden of the Court itself. That is how un-necessary suits can be disposed of at a preliminary stage.

In view of this matter, the impugned order referred to above is hereby set aside and the trial Court is directed to decide the application under Order VII Rule 11 of CPC in accordance with law.

The revision is allowed.

Consequently M.C.P. No. 1154/2001 is dismissed as it has become infructuous.