

(2014) 02 BOM CK 0109

In the Bombay High Court

Case No : Civil Revision Application No. 261 of 2011

M/s. Parakh Sales Corporation and Bhavarsing

APPELLANT

Vs

Manoj

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 16, Order 8 Rule 6(A), Order 8 Rule 6(C)

Citation : (2014) 4 BomCR 555

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : V.R. Mundada, for the Respondent

Final Decision : Dismissed

Judgement

A.I.S. Cheema, J.—Heard learned counsel for the applicant finally this being Revision Application. This Civil Revision Application has been filed by original plaintiff against order dated 5.7.2011, passed by Jt. Civil Judge, Senior Division, Aurangabad, permitting counter claim of the respondent-defendant to be taken on record and giving directions to frame additional issue in view of counter claim as plaintiff had filed written statement. Plaintiff brought the suit for recovery of Rs. 16,24,222/- claiming that plaintiff-partnership is having Head Office at Nasik, and that at Aurangabad the defendant was orally appointed as Manager of the firm on consolidated salary of Rs. 7000/- per month. It is claimed that the defendant left the service of plaintiff on his own on 1.9.2006. Plaintiff checked accounts and filed the suit for the recovery of amounts giving particulars in para 8 of the plaint. One of the item is that, defendant had received excess payment than as agreed by way of salary.

2. The defendant filed written statement and appears to have claimed that as per oral agreement, in addition to salary, he was entitled to sale incentives @ 2% on sale proceeds of each year. He claimed settlement of accounts and in the counter claim he sought rendition of accounts from plaintiff.

3. It appears that, earlier the counter claim was rejected by the trial Court and defendant had moved First Appeal No. 1627/2010 [2011(8) L.J. Soft. 102], which was allowed as the trial Court had, without giving opportunity to adduce evidence, dismissed the counter claim on merits and even directed that decree be drawn at the stage of preliminary issue.

4. After disposal of the earlier First Appeal, the present order has been passed by the trial Court after hearing the parties.

5. Learned counsel for applicant has submitted that the counter claim is not maintainable as the same has not been properly valued and there is no documentary evidence in support of the counter claim and that the counter claim is barred by limitation. Learned counsel for applicant has relied on the case of K.C. Skaria Vs. The Govt. of State of Kerala and Another, to submit that in matter like the present one, the counter claim cannot be maintained as the defendant ought to have known what are the incentives which were being claimed by him. Of course, the learned counsel is submitting that there was no such agreement as regards grant of incentives.

6. Perusal of the order of the trial Court shows that, the trial Court considered that the counter claim is for rendition of accounts and the amount is not ascertained and the court fee paid by defendant on counter claim should be prima facie accepted and that the court fee can be recovered at the time after ascertaining of the amount. The trial Court considered the judgment in the matter of "K.C. Skaria" (supra) and observed that, in present matter the defendant was working as Sales Manager of the plaintiff firm. The trial Court found that, in this matter, the counter claim was permissible. The trial Court has also observed that, looking to the rival contentions, question of limitation cannot be decided at the threshold.

7. According to the learned counsel for applicant, as per Order VIII Rule 6(C) of the CPC (CPC for short), the plaintiff had sought rejection of the counter claim. Learned counsel has relied on Order VIII Rule 6(C) read with the amendment applicable in Maharashtra, which is at Order VIII Rule 13 of the CPC, to submit that the counter claim could not have been maintainable and defendant can very well file separate suit.

Order VIII Rule 6(C) of the CPC reads as under:

6-C. Exclusion of counter claim:-Where a defendant sets up a counter claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application make such order as it thinks fit.

8. In the present matter, the Court has, after hearing the application, found that the counter claim need not be excluded. Present suit is for recovery of money by

the employer from his Manager. The Manager, who is no more in service, wants to rely on accounts which are with the employer to counter claim dues of sales incentives. The judgment relied on in the matter of "K.C. Skaria" had different facts. It was case between independent contractor employed by State Government for construction work. In facts of that matter, it was found that the Contractor was expected to maintain his own accounts.

Order XX Rule 16 reads as under:

16. Decree in suit for account between principal and agent:-In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

In the matter of "K.C. Skaria", Hon'ble Supreme Court observed in para 14, with reference to above rule as under:

We may clarify that Order 20, Rule 16 does not create or confer any substantive right to seek rendition of accounts in any particular type of cases, nor in all types of cases. It merely refers to a rule of procedure and would apply where there is an existing right to seek rendition of accounts having regard to the relationship between the parties.

9. In view of the above and considering relationship between the parties in the present matter, looking to Order VIII Rule 6(A), there is no reason why the counter claim cannot be maintained, which would be in the nature of a cross suit. I do not find that the impugned order suffers from any illegality or irregularity. There is no substance in the revision application. Civil Revision Application is rejected.