
(2009) 10 AHC CK 0050
In the Allahabad High Court

Nemendra Singh and Others

APPELLANT

Vs

Bhuvnendra Gola and Others

RESPONDENT

Date of Decision : 13-10-2009

Acts Referred:

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

Citation : (2010) 1 AWC 899

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—Heard Sri Swapnil Kumar, learned Counsel for the petitioners and Sri G.C. Pant, learned Counsel for the respondents.

2. With the consent of both the parties, the present writ petition is being disposed of at the admission stage itself.

3. It appears that the petitioners filed the suit for permanent injunction in the year 1998 being O.S. No. 503 of 1998. On 5.10.1998, the respondents filed written statement. Now on 12.9.2007 almost after nine years, the respondents filed an amendment application seeking amendment in the written statement raised counter claims. The petitioners filed objection on 5.10.2007. The Civil Judge (Junior Division), Etah vide order dated 7.11.2008 allowed the amendment application. The petitioners filed Revision No. 96 of 2008, which has been dismissed vide impugned order dated 29.8.2009 by the Additional District Judge, Etah and hence the present writ petition.

4. Learned Counsel for the petitioners submitted that under Order VIII, Rule 6A, C.P.C. defendants can file counter-claim either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired. He submitted that in the present case, written statement was filed on 5.10.1998 and the amendment application has been filed on 12.9.2007 the amendment of the written statement raising counterclaim. He submitted that so far as amendment in the written statement and the other part

is concerned, the order of the court below may be corrected but so far as raising the counter-claim after nine years by way of amendment after filing of the written statement in the year 1998 is wholly illegal and hit by Order VIII, Rule 6A, C.P.C.

Sri G.C. Pant, learned Counsel appearing on behalf of the respondents supported the order of the court below.

5. Having heard learned Counsel for the parties, I have perused the impugned order.

6. Order VIII, Rule 6A, C.P.C. read as follows:

6A. Counter-claim by defendant--(1) A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counterclaim is in the nature of a claim for damages or not:

Provided that such counterclaim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

7. It is true that Under Order VI, Rule 17, C.P.C, amendment can be allowed at any stage of the proceeding for determining the real controversy between the parties. Therefore, so far as the amendment in the written statement to decide the real controversy is concerned, the order of the court below is justified and no interference is called for, but so far as raising the counter-claim is concerned, the same can only be made either before or after filing of the suit but before the defendant has delivered his defence under Order VIII, Rule 6A, C.P.C. Admittedly, in the present case the written statement was filed on 5.10.1998 and the amendment has been sought on 12.9.2007 in which counter-claim has been made. Therefore, such amendment for counter-claim is hit by Order VIII, Rule 6A, C.P.C. and court below is not justified in allowing to raise the counter-claim by way of amendment.

8. In the result, the writ petition is allowed in part. The order of the Additional District Judge, Etah dated 29.8.2009 and the order of the Additional Civil Judge, Etah are set aside to the extent it allows the respondents amendment

application raising the counter-claim is concerned. So far as order allowing the amendment application for the amendment in the written statement is concerned, the same stand justified.