
(1997) 02 AHC CK 0044
In the Allahabad High Court
Case No : C.M.W.P. No. 6415 of 1997

Ram Pyare Singh and Others	Vs	APPELLANT
Ist Addl. District Judge and Others		RESPONDENT

Date of Decision : 27-02-1997

Acts Referred:

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

Citation : (1997) 02 AHC CK 0044

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Seth, J.—By means of some illegal construction the Plaintiff had opened a window sometimes in June, 1983. After the suit was instituted by the Plaintiff in January, 1983. The Defendant had sought to amend his written statement filed on 10.10.1983, pursuant to an application to that effect filed on 11.1.1995. By means of the said amendment counter-claim was sought to be raised by requiring the Plaintiff to close the said window. The said application was rejected by the learned Civil Judge (Junior Division) IIIrd Court, Gorakhpur in Suit No. 493 of 1983, by an order dated 21.2.1995 on the ground that the claim raised is barred by limitation. The resultant revision, being Civil Revision No. 140 of 1995, arising there out was dismissed by order dated 17.12.1996, by the Additional District Judge Ist Court, Gorakhpur. It is against this order the present writ petition has been filed.

2. Learned Counsel for the Petitioner contends that since the cause of action has accrued after filing of the suit but before delivery of defence. Therefore, it was open to the Defendant to lodge a counter-claim. The second contention was that the ground of limitation, as has been held by the learned trial court and as affirmed by the revisional court, is wholly misconceived. In as much as the limitation was not three years but 12 years. He further contends that so far as the counter-claim is concerned it can be raised at any time since the amendment

of the written statement can be made at any stage and that there is no limitation for the purposes of lodging counter-claim. According to him both the learned trial court and the revisional court had violated the fundamental principles of law resulting in grave injustice in refusing amendment.

3. Admittedly, the limitation is provided in Rule 6A of Order VIII of the Code of Civil Procedure, limiting the period between filing of the suit and delivery of defence is applicable only in respect to the cause of action in respect whereof counter-claim could be lodged. It has been so held by the Apex Court in the case of Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others, . The said decision has been followed by this Court in the case of Bhagwan Dayal v. Praswati Rajgopalacharya 1992 (2) CRC 1001. Even before the said 1987 decision this Court in Mahendra Jung Rana Vs. Pan Singh Negi, , has laid down the similar principle that time limit is related only to the cause of action in respect whereof counter-claim could be lodged. The decision in the case of Sushil Kumar Misra v. Smt. Sankutha Devi and Ors. 1988 ALJ 205, as cited by the learned Counsel for the Petitioner deals with different provision namely Rule 6C of Order VIII of the CPC on different circumstances and, as such, the ratio decided therein cannot be attracted to the present case. Inasmuch as in the said case the amendment application was still then not in the form of counter-claim. But in the present case the counter-claim was sought to be brought about by incorporating the same in the application for amendment which is distinguishable on fact.

4. Reliance was also placed in the case of Sudhir Kumar Wadhwa v. IVth Additional District and Sessions Judge, Shahjahanpur 1996 (1) CRC 481. Similar view with regard to the period of limitation prescribed was taken. In the case of Sushil Kumar Misra (supra) it has also been pointed out that even in respect of counter-claim separate suit can be filed, which is also the view taken in the case of Sudhir Kumar Wadhwa (supra).

5. The period, as specified in Rule 6A does not lay down that no provision of the Limitation Act would be applicable in respect of such cause of action that has accrued between the said specified period or that even if the Defendant is guilty of delay, laches or negligence or has shown inordinate absence of diligence. Even then he will be entitled to lodge counter-claim even after lapse of almost eleven years. In order to bring about the amendment one of the consideration that weighed with the court is diligence of the person seeking amendment. Admittedly, the cause of action had arisen between June, 1983 and October, 1983. Nothing has been disclosed to explain inordinate delay in seeking amendment after eleven years. The claim which has been lodged, whether the same is barred by limitation or riot need not be gone into at this stage when the application itself was found to have been made after inordinate delay, which has not been explained. In that view of the matter, I am not inclined to interfere with the order impugned in the facts and circumstances of the case. The writ petition is, therefore, dismissed. There will, however, be no order as to costs.

6. Placing reliance on the said cases the learned Counsel for the Petitioner submits that in that event liberty may be given to file fresh suit on the same cause of action. No liberty is necessary. It is always open to file, fresh suit in respect of such cause of action and if such suit is filed the same has to be decided in accordance with the law subject to limitation.

7. Let a copy of this order be given to the learned Counsel for the Petitioner on payment of usual charges within a week.