

(2000) 09 KAR CK 0021

In the Karnataka High Court

Case No : Civil Revision Petition No. 1224 of 1998

Sri. Hanumanthagouda

APPELLANT

Vs

Sri. Bandu @ Bandeppa Venkatesh Kulkarni and Others

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2000) 4 KCCR 2499

Hon'ble Judges : T.N. Vallinayagam, J

Bench : Single Bench

Advocate : Basavaraj Godachi, for the Appellant;

Final Decision : Allowed

Judgement

T.N. Vallinayagam, J.—This Civil Revision Petition is preferred by the first Defendant in OS 5 of 1995 on the file of the Civil Judge (Jr. Division) Bilagi against the non-acceptance of the counter claim in the said suit.

2. The Civil Revision Petition arose out of O.S. 5 of 1995, a suit for permanent injunction filed by the Respondents herein restraining the Petitioner not to obstruct their peaceful possession and enjoyment of the suit land. It is submitted by the Petitioner that there was some delay in filing the written statement and after taking permission from the Court, after the examination-in-chief was completed the statement was filed with a counter claim under Order 8, Rule 6A praying for a decree for specific performance on the basis of an agreement of sale. The counter claim was objected before the Court below on the ground of limitation and thus the Civil Revision Petition came to be filed challenging such an order.

3. The order of the trial Court mentioned that on 7.3.1997 the case was opened and on 26.7.1997, the Plaintiff recorded his evidence and closed his evidence on 10.11.1997 and the matter was posted for Defendant's evidence. Two adjournments were granted on 17.11.1997 and 27.11.1997 for adducing the

evidence, but the Defendants failed to take the opportunity to produce the evidence and the Court was compelled to post the matter for arguments. On 18.12.1997 the Defendant came forward with the counter claim under Order 8, Rule 6A claiming relief of specific performance of agreement of sale alleged to have been executed by the second Defendant on 6.9.1985. No application seeking leave of the Court was filed. The substance of the counter claim was that the 2nd Defendant as the minor guardian of the Plaintiff has executed an agreement of sale on 6.9.1985 and the cause of action said to have arisen on 13.9.1995, when the Plaintiff said to have denied the agreement of sale. The Defendant's contention was that the counter claim was to avoid multiplicity of litigation. The objection of the Plaintiff to the counter claim was that the same was barred by limitation and the Court cannot accept at this stage any counter claim under Order 8, Rule 6A. It was further contended that at no time the second Defendant had acted as minor guardian of the Plaintiff. The written statement having been filed on 11.7.1997, without counter claim, he cannot file another statement with the counter claim at a later point of time. The action is in contravention of Order 6, Rule 17 Code of Civil Procedure. Referring to various authorities cited by the parties and relying upon Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others, , the trial Court came to the conclusion that the counter claim cannot be permitted to be filed at the belated stage of the proceedings. Consequently, the same was rejected. It is this order that is challenged in the above Civil Revision Petition.

4. Mr. Basavaraj Godachi appearing for the Petitioner contended that a serious jurisdictional error is committed by the Court below in rejecting the counter claim on the question of laches. In fact the law laid down by the Supreme Court in Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others, with reference to filing of the counter claim even after written statement has been put in by the Defendant has not been followed. Non-following of this dictum of the Supreme Court is violative of Article 141 of the Constitution of India. It is further submitted that the counter claim made by the Petitioner is borne out of series of events of the case between the parties and the same cannot be rejected on a flimsy ground that no application to seek leave of the Court was filed. It is contended that the said counter claim of the Defendant is a must to effectively and finally adjudicate rival rights of the parties in the suit. The rejection of the counter claim results in multiplicity of proceedings which has to be discouraged in the best interest of the parties and equity.

5. The Respondent though served has not entered appearance.

6. I have considered over the arguments of the Petitioner.

7. The question that arise for consideration is:

Whether the counter claim by the Defendant is entertainable at any stage of the suit?

8. New Rules 6A to 6G under Order 8 CPC has been introduced by 1976

Amendment making statutory provisions for admissibility of the counter claim. A counter claim made by the Defendant is to enforce an independent right unconnecting the claim made in the plaint and not intended to be a defence to the claim in plaint. The amendment made detailed provisions thereof. The scope of the section is to provide for a cross action, not merely a defence to the Plaintiff's claim. While Rules 6A and 6B speaks about the provision for filing counter claim Rule 6C permits the Plaintiff to move for exclusion of such counter claim on the ground that such a claim has to be disposed of only by an independent suit. Rule 6D permits the Court to continue the counter claim even if the suit is otherwise stayed or discontinued. Rules 6F to 6G deals with the procedure. Order 8, Rule 6A is produced below:

6-A. Counter claim by Defendant.-(1) A Defendant in a suit may, in addition to his right of pleading a setoff 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 counter-claim is in the nature of a claim for damages or not: Provided that such counter-claim 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 plaint and governed by the rules applicable to plaints.

9. Before the Rules 6A to G regarding counter claim was inserted by 1976 amendment Act, the Apex Court in *Laxmidas Dahyabhai Kabarwala Vs. Nanabhai Chunilal Kabarwala and Others*, had held that there is nothing in law to preclude a Court from treating a counter claim as a plaint in a cross suit. The Court can treat a counter claim as a plaint in a cross suit and hear the two suits together provided necessary Court fee has been paid.

10. In *Munshi Ram and Others Vs. Radha Kishan (decd.) and Others*, the principle laid down was "a counter claim will be set up only in respect of a claim as to which the party can bring an independent action in the Court in which the counter action is brought, yet the counter claim need not be an action of the same nature as the original action or analogous thereto". In *Uthandarama Pillai Vs. M. Arumugham Pillai*, the Madras High Court has opined that the essence of a counter claim is that the Defendant should have an independent cause of action in the nature of cross action and not merely a defence to the Plaintiff's claim. Again in *Sri Vasudevandra Saraswathiswami Vs. Sridhara Sivarama Moorthy*, the Madras High Court has laid down a counter claim lies only in

respect of claims to which a party could be an independent action in the Court in which the counter claim is made.

10. These principles of various High Courts including the Supreme Court came to be incorporated in the CPC by way of amendment under Rule 6A. It is no doubt true that certain limitations are prescribed and conditions are contemplated under the above rule for filing the counter claim. The proviso to the main section prescribes that such counter claim shall not exceed the pecuniary limit of the jurisdiction of the Court. The proviso can however be not ignored. The other condition contemplated is before the Defendant has delivered his defence or before the time limited for delivering his defence has expired". But the Supreme Court in *Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others*, , relied upon by the Counsel for the Petitioner, has held that "if cause of action for the counter claim has arisen before filing of the written statement, the counter claim is quite maintainable. It is further observed as follows:

The next point that remains to be considered is whether Rule 6A(1) of Order VIII, Code of Civil Procedure, bars the filing of a counter claim after the filing of a written statement. This point need not detain us long for Rule 6A(1) does not, on the face of it, bar the filing of a counter claim by the Defendant after he had filed the written statement. What is laid down under Rule 6A(1) is that a counter claim can be filed, provided the cause of action had accrued to the Defendant before the Defendant had delivered his defence or before the time limited for delivering his defence has expired whether such counter claim is in the nature of a claim for damages or not. The High Court, in our opinion, has misread and misunderstood the provision of Rule 6A(1) in holding that as the Appellants had filed the counter claim after the filing of the written statement, the counter claim was not maintainable...

11. It was brought to my notice by the learned Counsel for the Petitioner the case of *Smt. Shanti Rani Das Dewanjee Vs. Dinesh Chandra Day (dead) by LRs.*, , wherein it is held that "application under Order 8, Rule 6A is ex-facie barred after filing of the written statement.

12. In the light of the above ruling the inevitable inference is that the time limit prescribed under Rule 6A has to be construed as "till the chance for the Defendant to raise his defence has expired". A liberal construction is implied upon by the Apex Court as, every party must be permitted to put forth his pleadings and laches, even if true, cannot set at nought the opportunity so conferred upon the Defendant under the above rule. A reference also has been made to a dictum in the Bombay High Court in *Manikchand Fulchand Katariya Vs. Lalchand Harakchand Katariya*, , which is as follows:

Scope of Rule 6A as hereinabove setout has been discussed by Mulla on CPC XIV Edition. The Author observes:

...The (sic) words in which Rule 6A is couched shows that it can be brought in respect of any claim that could be the subject of an independent suit. It is no

longer confined to money claims or to causes of action of the same nature as the original cause of action or matter. The words "any right or claim in respect of cause of action accruing to the Defendant" shows that the cause of action from which the counter claim arises need not arise from or have any nexus with the cause of action pleaded by the Plaintiff. A claim founded in tort may be opposed by one founded on contract. Further, the Defendant by his counter claim may ask for any relief, e.g., a declaration, relief against forfeiture, injunction, receiver, specific performance, an account payment of a money claim or damages. The words "both before or after the filing of the suit" in Rule 6A shows that a Defendant may set up a cause of action which has accrued since the suit was filed.

The very object of Rule 6A is to treat a counter-claim as an independent suit to be heard together with the Plaintiff's suit to enable the Court to pronounce final judgment. That means a counter claim is in its nature a cross-suit. The view expressed by Mulla on the scope of Rule 6A has been virtually accepted by the learned Judges of various High Courts in decisions upon which reliance is placed by the learned Counsel for the Respondent.

It will be seen from the decided cases that the majority view is in favour that the amended provisions of Rule 6A confers additional right to a Defendant in addition to his right of set off under Rule 6A to make counter-claim against the Plaintiff provided the counter-claim satisfied the conditions of four corners of Rule 6A.

13. A Division Bench of the Court in Shantesh Gureddi Vs. Smt. Thayamma, , has held as follows:

It cannot be disputed that the right to prefer counter claim has been statutorily granted to Defendant in order to avoid multiplicity of suits between the same parties and the same subject matter though based on different causes of action and grounds. Such a procedure helps rival parties to get their dispute adjudicated upon the same proceedings by leading same set of evidence and having common arguments. Therefore, one of the purpose of permitting filing of counter claims is to ensure speedy justice by avoiding procedural repetitions and technicalities. But, if the Defendant is permitted to raise a counter claim even at a belated stage of trial i.e., after issues are framed and recording of evidence has commenced, then it will amount to re-opening of trial and will not only lead to wastage of judicial hours but it will also put the Plaintiff to unnecessary litigation expenses and will necessarily delay the disposal of his case and that too only because of the Defendant is not vigilant about raising of his counter claim by availing the earliest appropriate opportunity. It is well settled principle that the Courts will not help those persons, who are guilty of laches. The legal maxim is *vigilantibus non dormientibus leges subveniunt* (the vigilant, not the sleeping, are aided by the laws). It has to be remembered in this context that if the cause of action survives, then even otherwise the right of Defendant to file a separate suit is not taken away and therefore no irreparable injury or loss will cause to him.

For the above reasons, we hold that the Defendant can file his counter claim even after filing of written statement but it should be before the commencement of the evidence in the trial so that the issues are settled in relation to the counter claim as well granting fair opportunity to the Plaintiff to adduce evidence in that regard also.

The view of the Division Bench was that it should be before the commencement of the trial. The cumulative effect of the Division Bench as well as the judgment of the Supreme Court in Mahendra Kumar's case and Shanti Rai Das Dewanjee's case is that liberal construction of the rule is called for and even in a case where the evidence has not reached the finality, such a plea can be permitted to be raised.

14. I derive support to my view from the following paragraph in Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others, , where the Supreme Court has observed as follows:

It is manifestly clear from Section 14 that the suit referred to therein is a suit to be filed by a person for the establishment of his right after the Collector had declared the treasure to be ownerless u/s 9 after making a claim before the Collector u/s 13 the words such order" in Section 14, in our view, refer to the order passed by the Collector u/s 13. Further, the placement of Section 14 after Section 13 of the Act points only to the filing of the suit by a person after the Collector had made an order staying the proceedings u/s 13. The suit contemplated by Section 8 of the Act has to be filed by the claimant within the period for which the hearing of the case is adjourned. Such period for which the hearing u/s 8 is adjourned by the Collector may be more than a month. It is absurd to think that although Section 8 provides that the suit has to be filed within the period for which the hearing is adjourned, yet it has to be filed within one month u/s 14. Section 8 and Section 13 and 14 contemplate two different situations. While u/s 8 the suit has to be filed within the period during which the hearing stands adjourned, the suit u/s 14 has to be filed within one month of the order of the Collector u/s 13 of the Act. To hold that suits u/s 8 and Section 13 are both governed by the limitation prescribed by Section 14, will be to do violence to the provisions of the Act and the clear intention of the Legislature as indicated in the provisions.

Para 15 of the above case also speaks about the facts whwt is laid down under Rule 6A(1) is that a counter claim can be filed, provided the cause of action had accrued to the Defendant before the Defendant had delivered his defence. The word "Defendant has delivered his defence" has to be construed in the light of Order 6, Rule 17, which provides for amendment of the pleadings. A combined reading of Order 6, Rule 17 with Rule 6A of Order 8 quoted above goes to show that before the evidence is finally closed by either side the right given to the Defendant under Order 8, Rule 6A can be exercised. In fact while dealing with Order 6, Rule 17 in two cases, namely, Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others, and Jai Jai Ram Manohar Lal Vs. National Building

Material Supply Gurgaon, , the following principle is evolved much delay and laches in making the application for amendment is not a ground for refusal of the amendment. Amendment is discretionary matter and although amendment at a late stage is not to be granted as a matter of course, the Court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed can be compensated by costs or otherwise." Thus, taking a cue from the above dictum of the Supreme Court held that the Court must lean in favour of full and complete justice. I am of the view that the principle decided by the Division Bench can be extended to a case where the evidence is not completely closed by the parties and before the matter is reserved for judgment.

15. In the light of the above discussions, I hold that rejection of the counter claim by the Court below is not legal and the order is set aside and the Civil Revision Petition is allowed. However it is made clear that it is open to the Plaintiff to raise all defence including one of limitation to the counter claim and also take advantage of Rule 6C of Order 8.

16. In the result, the Civil Revision Petition is allowed. No costs.