

(1997) 07 PAT CK 0003
In the Patna High Court
Case No : Civil Revision No. 185 of 1996

Suresh Kumar and Others

APPELLANT

Vs

Nagendra Kumar Labh

RESPONDENT

Date of Decision : 25-07-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 19(1), Order 8 Rule 6A, Order 8 Rule 6C, Order 8 Rule 6F

Citation : (1997) 2 PLJR 456

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Murari Narain Chaudhary, for the Appellant; Indu Shekhar Prasad Sinha and Shashi Nath Jha, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—This revision application is directed against the order dated 2nd September, 1995 passed by Subordinate Judge, Madhubani whereby the prayer of the Plaintiffs-Petitioners for exclusion of the counter claim under Order VIII Rule 6C of the CPC has been rejected and the Defendant's counter claim has been accepted for consideration with the direction that the matters regarding Court fee and verification may be heard later on.

2. The suit was filed by the Plaintiffs for recovery of the amount on account of arrears of rent. The case of the Defendant is that Kiryanamas were executed between them but after execution of partnership deed between Plaintiff No. 1 and the Defendant for running a business of petroleum product, Plaintiff No. 1 was bound to render account of business from the date of its start upto the date of inventory and the Defendant joined the issue by filling counter claim through written statement. This counter claim has been objected to by the Plaintiffs which has been rejected by the impugned order and Defendant's counter claim has been accepted.

3. Mr. Chaudhary, learned Counsel appearing for the Plaintiffs-Petitioners

contended that, in fact, this is a suit for recovery of arrears of rent and not a money suit and as such no such counter claim at all is maintainable. It is further contended by him that in the facts and circumstances, the counter claim filed on behalf of the Defendant cannot be entertained as it only relates to Plaintiff No. 1 and not as against other Plaintiffs. On facts also, Mr. Chaudhary tried to suggest that the counter claim raised by the Defendant cannot be entertained in the present suit.

4. On the other hand, Mr. Sinha, learned Counsel appearing for the Defendant-opposite party submitted that the counter claim having been filed before the time fixed for filing written statement, the prayer of the Plaintiffs-Petitioners for its exclusion has rightly been rejected by the Court below. In this regard, he placed reliance upon the decision of the Supreme Court in the case of Jag Mohan Chawla and another Vs. Dera Radha Swami Satsang and others, . I find substance in the submission of the learned Counsel for the Defendant-opposite party. From the impugned order it appears that the counter claim filed by Defendant-opposite party was within time. The Supreme Court in the case of Jagmohan Chawla (supra) held that a Defendant can claim any right by way of counter claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the Plaintiffs and have the same cause of action adjudicated without relegating the Defendant to file a separate suit. According to apex Court, the only limitation is that the cause of action should arise before the time fixed for filling the written statement expires.

5. I do not find any substance in the first submission either of the. learned Counsel for the Plaintiffs-Petitioners that the suit was for recovery of arrears of rent and not a money suit for which only counter claim under Order VIII Rule 6C of the Code is maintainable. The suit itself has been filed by the Plaintiffs in the form of money suit for recovery of Rs. 38, 750/- on account of arrears of rent. As such, it cannot lie in the mouth of the Plaintiffs to contend that the suit is not a money suit in which counter claim can be filed. Moreover, a bench of this Court in the case of Gaya Prasad Vs. Smt. Jamwanti Devi and Others, , has held that Order VIII Rule 6A of the Code is not limited to only money suit. Insertion of Rule 6A in Order VIII was always to extend the limit of set off by introducing counter claim without mentioning about the category of suit and such extension cannot be restricted in the name of harmonious construction of Rule 6F of Order VIII and Rule 19(1) of Order XX of the Code.

6. Under such circumstances, I do not find any merit in this civil revision application and the same is dismissed but without costs.