

RAJASTHAN HIGH COURT

Mohan Lal

Vs.

Bhawani Shankar

Civil Revision Petition No. 973 of 1997

(Arun Madan, J.)

26.11.2001

ORDER

Arun Madan, J.

1. The abovenoted revision petition is directed against the order dated 26-4-1997 passed by the learned Civil Judge (Junior Division), Anta (Baran) in CO No. 157/96 whereby the plaintiffs' (respondents) application under Order 8, Rule 6, Civil Procedure Code was allowed excluding the counter claim filed by the petitioners/defendants.

2. The facts which are relevant for deciding this revision petition briefly stated are that on 10-4-95 the plaintiffs (hereinafter referred to as the respondents") filed a suit for permanent injunction against the defendants (hereinafter referred to as the petitioners") seeking the relief in the nature of permanent injunction to the following effect:-

(Vernacular matter omitted - Ed.)

3. The above suit was contested by the petitioners by filing a joint written statement/counter claim on 16-5-1995 seeking the following reliefs :-

(Vernacular matter omitted - Ed.)

4. It is pertinent to mention herein that without filing any written statement to the counter claim the respondents moved an application on 24-10-1996 by invoking the provisions of Order 8, Rule 6, Civil Procedure Code praying therein that the para Nos. 10 and 11 and prayer clause Nos. 1 and 2 of the counter claim be excluded.

5. The learned trial Court after hearing the parties vide impugned order dated 26-4-1997 allowed the application of the respondents excluding the counter claim pleaded by the petitioners and they were directed to file a separate suit for the same.

6. Heard learned counsel for the parties.

7. Mr. B. L. Mandhana, learned counsel for the petitioners has vehemently contended at the bar that the learned trial Court while allowing the application of the respondents has overlooked the salient feature of the provisions of Order

8, Rule 6A, Civil Procedure Code as there was nothing in the said provisions restricting the nature of relief as was prayed for by the petitioners (defendants). More particularly, the nature of relief claimed in the counter claim was not dissimilar as is also evident from perusal of the said provisions.

8. In order to appreciate the contentions of the learned counsel for the parties, I would like to quote the provisions of Rule 6 and 6A of Order 8, Civil Procedure Code more particularly sub-Rule (2) which stipulates as under :-

"6.Particulars of set-off to be given in written statement.- (1)Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off."

6-A.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 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 a plaint and governed by the rules applicable to plaints."

9. During the course of hearing, Mr. B. L. Mandhana, learned counsel for the petitioners has vehemently contended at the bar that the trial Court vide its impugned order dated 26-4-1997 while allowing the respondents' application under Order 8, Rule 6, Civil Procedure Code had no justification to exclude the counter claim preferred by the petitioners since the very purpose of allowing the application would be set at naught if the counter claim was not to be entertained. Learned counsel further contended that what the trial Court lost sight of the fact that when the counter claim was within the purview of Rules 6 and 6A, Order 8 Civil Procedure Code, it becomes a matter of right of the petitioners who in a suit, in addition to his right of pleading as already set up, can file a counter-claim against the claim of the respondents (plaintiffs) and they have a right or claim in respect of a cause of action accruing to them against the respondents (plaintiffs) to raise the counter claim either before or after the filing of the suit but before the petitioners (defendants) have delivered their defence or before the time limited for delivering their defence has expired, whether such counter-claim is in the nature of claim for damages or not. The only limitation while setting up such counter claim is that the counter claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

10. Mr. B. L. Mandhana, learned counsel for the petitioners in support of his contention relied upon the decision of the Apex Court in *Jag Mohan Chawla v. Dera Radha Swami Satsang*,¹ The controversy, which arose before the Apex Court was as under at pages 2222-2223 :-

"(1) whether in a suit for injunction, counter claim for injunction in respect of the same or a different property is maintainable? and

(2) whether the defendant can claim any right by way of a 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 plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit?"

The Apex Court observed as under at Page 2223 :-

In sub-Rule (1) of Rule 6A, the language is couched with words of wide width as to enable the parties to bring their own independent cause of action in respect of any claim that would be the subject matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action on the same nature as original action of the plaintiffs. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit".

The Apex Court has further observed thus:-

"The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross suit with all the indicia of pleadings as a plaint including the duty to avert his cause of action and also payment of the requisite Court-fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a 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 plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit".

11. Controverting the above contentions of the learned counsel for the petitioners, Mr. Bhanwar Bagri, learned counsel appearing on behalf of the respondents has also placed reliance upon the decision of the Apex Court in *Gurbachan Singh v. Bhag Singh*,² and another judgment of this Court in *Sushil Kumar v. Prabhu Dayal decided in*³

12. In *Gurbachan Singh (supra)*, the controversy which arose before the Apex Court was in respect of a suit filed for perpetual injunction restraining the respondents from dispossessing them from the suit land or part thereof. The respondent/defendant had filed written statement contending *inter alia* that the petitioner and the respondent had trespassed into their peaceful possession unlawfully. The trial Court while dismissing the suit of the petitioner, granted decree for possession of two kanals. On appeal, the said order of the trial Court was confirmed by the High Court observing, as under at page 1087 :-

"It is true that Rule 6A(a) was introduced by Amendment Act of 1976. Preceding the amendment, it was settled law that except in a money claim, counter claim or set off cannot be set up in other suits. The Law Commission of India had recommended, to avoid multiplicity of the proceedings, right to the defendants to raise the plea of set off in addition to a counter claim in Rule 6 in the same suit irrespective of the fact whether the cause of action for counter claim or set off had accrued to defendant either before or after the filing of the suit. The limitation was that the counter claim or set off must be pleaded by way of defence in the written statement before the defendant filed his written statement or before the time limit for delivering the written statement has expired, whether such counter-claim is in the nature of a claim for damages or not. Further limitation was that the counter-claim should not exceed the pecuniary limits of the jurisdiction of the Court.

In other words, by laying the counter claim pecuniary jurisdiction of the Court cannot be divested and the power to try the suit already entertained cannot be taken away by accepting the counter claim beyond its pecuniary jurisdiction. Thus considered we hold that in a suit for injunction, the counter claim for possession also could be entertained, by operation of Order 8, Rule 6(A) of Civil Procedure Code".

13. From the above, it is clear that what the Apex Court permitted was that in a suit for injunction, counter claim can also be entertained under Order 8, Rule 6A, Civil Procedure Code without there being the necessity of defendant's filing a separate suit for the same. In other words, by entertaining the counter claim the jurisdiction of the Court cannot be divested and the powers to try the suit already entertained cannot be taken away by accepting the counter claim beyond its technical jurisdiction. Accordingly, the apex Court observed that in a suit for injunction, counter claim for

possession can also be entertained by operation of Order 8, Rule 6A(a), Civil Procedure Code.

14. This proposition in my view, supports the argument advanced by the petitioners and it does not help the respondents in any manner whatsoever.

15. The learned single Judge of this Court in Sushil Kumar (*supra*) has appreciated and followed the ratio of the said decision of the Apex Court while allowing the revision petition and setting aside the impugned order of the Courts below directing that the counter claim raised by the defendant seeking eviction of the plaintiff shall be excluded; which is not the position in the instant case. The controversy raised before the learned single Judge was as to whether the Courts below committed illegality in determining the provisional rent in respect of the suit premises under Section 13 (3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950; which is irrelevant consideration in the facts and circumstances of this case.

16. In the present case, the claims as well as counter claim raised by the parties are similar and related to the same subject matter at issue which would determine the rights of the parties hence, in my view, there was no necessity for filing a separate suit for the similar cause of action in any manner whatsoever. The trial Court has further erroneously failed to take into consideration salient feature of the case that the rights granted to the defendants to set up counter claim are not only limited for the claim putforth by the plaintiff in a suit itself and even the cause of action need not be the same; there is nothing in Order 8, Rule 6 or 6A, Civil Procedure Code restricting the nature of relief which the defendants might seek in the counter claim. However, in the present case, the relief claimed in the counter claim is not dis-similar and yet the impugned order has been passed which is grossly arbitrary, unjust and hence the impugned order deserves to be quashed and set aside. The trial Court has thus not appropriately appreciate the provisions of the statute as well as requirements of the law in this regard.

17. In my view, the trial Court has further committed jurisdictional error in overlooking that the counter claim can only be excluded if the Court finds that it would not be fair to the plaintiff or whether it is likely to create unnecessary complications. The trial Court has not in any manner has drawn up such conclusions and yet has directed exclusion of the counter claim. The trial Court has further grossly

overlooked the fact that without filing the written statement by the plaintiff to the counter claim, the application filed by them under Order 8, Rule 6, Civil Procedure Code was not to be entertainable. The trial Court has further erred in law by not taking into consideration that the very object of incorporating the said provisions relating to counter claim is for expeditious disposal of the claim between the parties in a single proceeding without there being the necessity of filing a separate suit so as to avoid multiplicity of the proceedings and it is precisely for this reason that the legislature in its wisdom has incorporated the aforesaid provisions in the statute.

18. This being the only requirement of the statute, the trial Court absolutely in my view, had no justification of directing the petitioners to file a separate suit. In all probability, the impugned order does not stand to reason and deserves to be quashed and set aside as it suffers from jurisdictional error which is apparent on the face of record which if permitted will cause irreparable injury to the petitioners besides gross injustice. This impugned order is obviously grossly illegal, wholly erroneous, unjust and suffers from jurisdictional error and the revision petition deserves to be allowed as it meets the requirements of Section 115, Civil Procedure Code.

19. As a result of the above discussion, the revision petition is accordingly allowed. The impugned order dated 26-4-1997 of the learned Civil Judge (Jr.Div.), Anta (Baran) in CO No. 157/96 is quashed and set aside. The trial Court is directed to decided the suit expeditiously preferably within 6 months from the date of communication of the certified copy of this order.

20. There will be no order as to costs.

Petition allowed.

Cases Referred.

1. AIR 1996 SC 2222
2. AIR 1996 SC 1087
3. SB Civil Misc. Appeal No. 771/1997