

# RAJASTHAN HIGH COURT

Shri Pooran Industries

Vs.

Suvina's Enterprises

Civil First Appeal No. 278 of 2005

(K.C. Sharma, J.)

23.08.2006

## ORDER

**K.C. Sharma, J.**

1. The plaintiffs filed a money suit against the defendants for recovery of a sum of Rs. 2,39,000/-. The defendants in their written statements filed a counter-claim, thereby claiming a sum of Rs. 1,26,000/- from the plaintiff appellants. The learned trial Court, at the conclusion of trial, dismissed the plaintiffs' suit and decreed the defendants' counter-claim against the plaintiffs for a sum of Rs. 91830/- along with interest @ 18% p.a. With effect from 19-10-2000 on which the notice Ex. 12 was issued, till filing of the written statement and @ 12% p.a. after filing of written statement till realization of the amount.
2. The plaintiff-appellants challenged the above judgment and decree dated 5-3-2000 of filing first appeal before this Court, with the prayer that plaintiffs' suit be decreed and the counter-claim of the defendants be dismissed with costs throughout.
3. During pendency of the appeal, the defendant-respondents have filed an application under Order 7, Rule 11, Civil Procedure Code with the allegation that the plaintiffs have not paid court-fee on the counter-claim and have paid court-fee only on the amount of Rs. 2,39,000/- sought to be recovered from the defendants. The plaintiffs have filed reply to this application and have stated that they are not required to pay court-fee on the amount of counter-claim.
4. I have heard learned counsel for the parties on the above application. Section 21 of the Rajasthan Court Fees and Suits Valuation Act, 1961 (for short "the Act") deals

with Suits for money. It provides that court-fee shall be computed on the amount claimed. Section 47 of the Act provides that the fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal. Order 8, Rule 6A of Civil Procedure Code deals with counter-claim. Proviso (4) to Rule 6A of Order 8 provides that counter-claim shall be treated as a plaint and shall be governed by the rules applicable to the plaints. Thus counter-claim is substantially a cross suit, which enables a defendant to enforce a claim against the plaintiff as effectively as in an independent action. Therefore, the defendant can file counter-claim, provided he pays court-fee.

5. In the case at hand the plaintiffs have challenged the judgment and decree of the trial Court on both the counts. Since they have challenged the judgment and decree of the Court below, dismissing their suit for recovery of Rs. 2,39,000/- as also decreeing the amount of counter-claim to the tune of Rs. 91830/- in favour of the defendants, therefore, in view of the provisions of Section 47 of the Act the plaintiffs are required to pay court-fee on the amount of 91830/- inasmuch as the counter claim is the subject matter of the appeal and the fee payable in this appeal shall be the same as the fee that was payable in the Court of first instance. If court fee is not paid on the counter-claim in the appeal, the appellate Court would not be in a position to consider the question of counter-claim. If court-fee is not paid in respect of the decree on counter-claim, that part of the decree would be final and would operate as *res judicata*. I am fortified in my view by a decision of the Kerala High Court in *Nherapoyil N.P. Moideen v. Narayan Nair*,<sup>1</sup> In this case similar question, whether non-payment of Court-fee on the plea of counter-claim in the appeal will work as *res judicata* came to be considered by the Kerala High Court and after considering the law propounded by the Apex Court in series of judgments, the Court held that by non-payment of Court-fee on the counter-claim in appeal, the appellate Court is not in a position to consider the question of counter-claim. The Court held that the counter-claim as rejected by the lower Court has become final. That portion of the discharge of the suit amount as raising the counter-claim cannot be considered by the appellate Court on the principle of *res judicata*. In this view of the matter, challenge to the counter claim cannot be considered unless the plaintiffs pay Court fee on the decretal amount.

6. For the reasons aforesaid the application of the defendants filed under Order 7, Rule 11 is allowed and the plaintiffs are directed to pay Court-fee on the counter-claim within two weeks from today.

Application allowed.

Cases Referred.

1. AIR 1997 Ker 318