

A.M.A.Rawoof Vs. Saifuddin

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Court : Chennai

Decided On : Jun-24-2013

Judge : The Hon'Ble Mrs.Justice Aruna Jagadeesan

Appellant : A.M.A.Rawoof

Respondent : Saifuddin

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

24. 06/2013 CORAM THE HON'BLE MRS.JUSTICE ARUNA JAGADEESAN
A.No.1930/2013 in CS.No.858/2010 A.M.A.RAWOOF AND ANOTHER⁵⁴³,
G.N.T.ROAD, ERUKKENCHERRY, CHENNAI-118. VS¹SAIFUDDIN NO.4227,D-
2, K.K.R.TOWN, MADHAVARAM, CHENNAI-60. 2 MR. JOHN RAJA PROP
GOLDEN TIMBERS⁵⁴³ GNT ROAD ERUKANCHERRY CHENNAI¹¹⁸

ORDER

This application is filed by the applicant/1st Defendant in CS.No.858/2010 to receive the counter claim filed by him in the suit.

2. The 1st Respondent/plaintiff has filed the suit to declare the agreement dated 10.05.2008 entered into between the Plaintiff and the 1st Defendant as null and void and not binding on the Plaintiff and consequently, to direct the Defendants to quit and deliver vacant possession of the suit property on the 1st Defendant receiving Rs.2,50,000/- from the plaintiff and for damages.

3. The brief facts culled out from the application filed by the 1st Defendant are stated below:- The 1st Respondent/ Plaintiff is the owner of the suit property bearing Door No.54/3, GNT Road, Erukkencherry, Chennai-118 and he has agreed to sell the suit property to the applicant/1st Defendant for a sale consideration of Rs.9 lakhs and the 1st Defendant paid the same and was put in possession of the suit property. The 1st Defendant is residing in the I Floor and the Ground Floor has been rented to the tenant. It is stated that the 1st Defendant has initiated eviction proceedings in RCOP.No.2581/2009 against the tenant and has also obtained eviction order against the tenant. According to the 1st Respondent, after lapse of few years, the Plaintiff demanded to renew the earlier contract on fresh terms and conditions on the ground of escalation in real estate prices. Thereafter, after much negotiations, an agreement of sale was executed on 10.5.2008 between the Plaintiff and the 1st Defendant. In and by the said sale agreement, the total sale consideration of the suit property was revised to Rs.30 lakhs and the 1st Defendant was said to have paid a sum of Rs.21,00,000/-, which included the amount already paid by him. It is further stated that by virtue of the said sale agreement, the 1st Defendant has to pay the balance sale consideration of Rs.9 lakhs within a period of four months as stipulated in the said sale agreement. It is further stated by the 1st Defendant that in spite of the repeated demands, the Plaintiff failed to execute the sale deed and the 1st Defendant was always ready and willing to purchase the suit property. Therefore, the 1st Defendant is entitled to the relief of specific performance of the sale agreement against the Plaintiff. After filing the Written Statement, the 1st Defendant has filed a counter claim for specific performance of the sale agreement dated 10.5.2008 to assert his legal right in purchasing the suit property. Therefore, he has come forward with this application to receive the counter claim in the above suit.

4. This application was resisted by the Plaintiff on the ground that the counter claim is barred by limitation. It is further contended that this application has been filed to drag on the matter and on the ground of equity also, this application is liable to be dismissed. It is pointed out that the sale agreement was executed on 10.5.2008 and four months time was stipulated in the said sale agreement itself for completion of the sale transaction. The time stipulated in the sale agreement for performance of the contract expired on 9.9.2008. If the applicant intended to file a

suit for specific performance, he ought to have filed it on or before 8.9.2011. As the counter claim has been made on 9.4.2012 and the application to receive the counter claim having been filed on 17.4.2013, both the counter claim and this application are liable to be rejected on the ground of limitation.

5. Mr.P.Amarnath, the learned counsel for the applicant/1st Defendant urged that Order 8 Rule 6A of CPC conferred a statutory right upon the 1st Defendant to file a counter claim and they do not prescribe any time limit for filing of such a claim. A counter claim claim could be filed at any stage of the suit and is not required to be filed along with the Written Statement. The learned counsel for the 1st Defendant placed reliance on the decision of this court reported in 2008-1-CTC-369 (S.Thirugnanasambandam Vs. Kaliyaperumal Chettiar) in support of his contention that the counter claim made by the Defendant can be entertained at any stage to avoid multiplicity of judicial proceedings and the court has to consider whether it is necessary for determining the real question in controversy between the parties provided that the claim is not hit by limitation or exceeds pecuniary jurisdiction of the court.

6. On the other hand, Mr.G.Saravanan, the learned counsel for the 1st Respondent/plaintiff contended that even though Order 8 Rule 6A of CPC does not prescribe any specific time limit for filing a counter claim, but if it is allowed to be filed at any stage of the suit, it would result in protracting the trial and would defeat the very object of treating the counter claim as a cross suit and trying the same arising in the suit. The learned counsel for the Plaintiff would contend that the decision of this court would clearly indicate that the counter claim should not be hit by the law of limitation. The counter claim filed by the 1st Defendant ex-facie appears to be barred by limitation and as such, is liable to be rejected.

7. This court heard the learned counsel on either side and also perused materials placed on record.

8. Rule 6A(1) of Order 8 of CPC confers a right upon a Defendant in a suit to set up, by way of counter claim against the claim of the Plaintiff in the suit, any right so claimed in respect of a cause of action, which accrues to the Defendant against the Plaintiff during certain period and the cause ".either before or after filing of the

suit, but before the Defendant has delivered his defence or before the time limit for delivering his defence has expired". specified that period. The proposition of law that the time prescribed in Order 8 Rule 6A(1) of CPC relates to accrual of the cause of action for the counter claim and not to the filing of the counter claim is well settled.

9. Rule 6A(4) of Order 8 of CPC provides that the counter claim shall be treated as a plaint governed by the rules applicable to plaints. Order 7 of CPC provides for the rules governing the plaints. Clause (d) of Rule 11 of Order 7 of CPC makes a plaint liable to rejection where the suit appears from the statement in the plaint to be barred by any law. Section 3(1) of the Limitation Act provides that subject to the provisions contained in Sections 4 to 24 (inclusive) every suit instituted after the prescribed period shall be dismissed, although limitation has not been set up as a defence. According to clause (a) of Section 3(2), a suit can be said to have been instituted for the purpose of this Act, in any ordinary case, when the plaint is presented to the appropriate officer and according to clause (b) of Section 3(2), any claim by way of counter claim shall be treated as a separate suit and shall be deemed to have been instituted on the date on which it is made in court.

10. Even according to the Plaintiff, the suit agreement was entered into between the plaintiff and the Defendants on 10.5.2008. As per the agreement, the 1st Defendant has to pay Rs.9 lakhs within a period of four months from the date of the agreement i.e. 10.5.2008 and on receipt of the said sum, the plaintiff shall execute the sale deed. Therefore, even as per the agreement relied on by the 1st Defendant, four months time was stipulated for completion of the sale transaction. As per Article 54 of the Limitation Act, limitation for filing a suit is three years. If the date is fixed for the performance of the contract, then the time would run from the said date and if no such date is fixed, time for performance would run from the date of the knowledge of the refusal of the parties.

11. In the present case, since the time limit specified in the agreement itself is four months, the time stipulated under the agreement expired on 9.9.2008 and the time limit of three years would run from 9.9.2008 and it expired on 8.9.2011. Therefore, the suit or counter claim ought to have been filed by the 1st Defendant on or

before 8.9.2011. Since the counter claim is to be treated as an independent plaint, the question as to whether it is ex-facie barred by limitation undoubtedly falls within the jurisdiction of the court for determination at the stage when it is filed and on the basis of the averments made in the present claim petition, the claim appears to be barred by law of limitation. On the basis of the averments and on the perusal of the agreement, it is seen that three years time expired by 8.9.2011.

12. It is also seen that the 1st Defendant had sent a letter dated 1.9.2008 expressing his willingness to complete the sale and calling upon the Plaintiff to execute the sale deed, to which, the Plaintiff had issued a legal notice dated 28.11.2008, denying any knowledge about the agreement. Therefore, even from the date of the knowledge i.e. 28.11.2008, the counter claim ought to have been filed within three years i.e. on or before 27.11.2011, but admittedly, in this case, the counter claim has been made on 9.4.2012 and the application to receive the counter claim has been filed on 17.4.2013. In view of the provisions of Article 54 of the Limitation Act, relief for specific performance can be claimed within a period of three years when the right to sue accrues first. In the instant matter, even as per his own showing, cause of action accrued to the 1st Defendant for raising counter is on 27.11.2011 whereas the counter claim is presented on 9.4.2012. The counter claim itself is beyond the prescribed period of limitation on his own showing and therefore, the claim raised is barred by time.

13. At this juncture, it is relevant to refer to the decision of the Honourable Supreme Court reported in AIR-1987-SC-1395 (Mahendra Kumar Vs. State of MP) wherein the question whether the counter claim was barred by the law of limitation was specifically gone into. The Honourable Supreme Court has observed thus:- "Under Article 113 of the Limitation Act, 1963, the period of limitation of three years from the date the right to sue accrues, has been provided for any suit for which no period of limitation is provided elsewhere in the schedule. It is not disputed that a counter claim, which is treated as a suit under Section 3(2)(b) of the Limitation Act had been filed by the Appellants within three years from the date of accrual to them of the right to sue.". As such, it cannot be said that there is absolutely no time limit for filing of a counter claim and that it is for the Defendant to choose the time for filing it. It is true that Order 8 Rules 6A to 6G may not in so

many words prescribe any prescribe any particular period of limitation for filing of a counter claim. But, in view of Order 8 Rule 6C(4) read with Order 7 Rule 11(d) of CPC and Section 3(2)(b) of the Limitation Act, it can be said that there is a time limit for filing a counter claim and the time limit is what is prescribed by the Limitation Act in relation to that particular counter claim. If it appears from the statements made in the application wherein the counter claim is set up that it is barred by law of limitation the counter claim would be liable to rejection.

14. In the decision of the Honourable Supreme Court reported in AIR-1987-SC-1395 (Mahendra Kumar Vs. State of MP) cited above, the Appellants filed the counter claim after the filing of the Written Statement and objection was raised against that counter claim on the ground that it was barred by limitation as prescribed by certain provision of a Special Act and that it was also not maintainable under Order 8 Rule 6A(i) of CPC. The learned District Judge dismissed the counter claim on a finding that it was barred by limitation prescribed by the Special Act. The High Court in revision upheld the findings of the District Judge and further held that the counter claim having been filed after the filing of the Written Statement was not maintainable under Order 8 Rule 6A(i) of CPC. In the appeal by special leave the Honourable Supreme Court reversed the concurrent findings of the courts below on the question of bar of limitation as pleaded under the Special Act and also held that Order 8 Rule 6A(i) does not on the face of it bar the filing of the counter claim after the filing of the Written Statement and as the cause of action for the counter claim had arisen before the filing of the Written Statement, the counter claim was quite maintainable. The Honourable Supreme Court proceeded further to examine the question as to whether the counter claim was barred by limits of time as prescribed by the Limitation Act whereupon it was not disputed before the Honourable Supreme Court that the counter claim in that case was governed by the residuary Art.113 of the Limitation Act and that it had been filed within three years from the date of accrual of the right to sue. Under such circumstances, the Honourable Supreme Court allowed the appeal. This decision of the Honourable Supreme Court is thus an authority for the proposition that filing of a counter claim will be maintainable even after filing of the Written Statement but not after it becomes barred by limitation.

15. In the light of the decision of the Honourable Supreme Court cited supra and upon considering all relevant aspects of the matter, I am of the view that the counter claim made by the 1st Defendant is barred by limitation and is liable to be rejected. Accordingly, this application is dismissed. The matter is remitted back to the Additional Master I for recording evidence and the recording of evidence shall be completed as expeditiously as possible without giving unnecessary adjournment. Srcm

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