

K. Ramachandra Rao Vs. P. Narayan

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Court : Andhra Pradesh

Decided On : Jan-29-2001

Reported in : 2001(3)ALD119; 2001(3)ALT110

Judge : A. Gopal Reddy, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 8, Rule 6-A(1);
[Limitation Act, 1963](#) - Sections 3(2)

Appeal No. : CRP No. 3650 of 2000

Appellant : K. Ramachandra Rao

Respondent : P. Narayan

Advocate for Def. : Mr. D. Linga Rao, Adv.

Advocate for Pet/Ap. : Mr. K. Vijaya Rao, Adv. for ;Mr. Vilas S. Afzal Purkar

Judgement :

ORDER

1. The plaintiff is the revision petitioner. He files this revision petition against the orders passed by the senior Civil Judge, Medak dated 4-8-2000 in IA No.248 of 1999 in OS No.34 of 1998 refusing to dismiss the counter-claim set up by the respondent-defendant in OS No.34 of 1998.

2. The petitioner-plaintiff instituted a suit in OS No.34 of 1998 seeking a decree for a sum of Rs.2,00,000/- towards civil damages with interest @ 18% per annum alleging that he rendered his technical know how and expertise to the defendant in developing his farm at Sangupet under Andole village limits. As certain disputes arose between the parties, the defendant lodged a complaint with CBCID which caused mental agony and humiliation to the plaintiff and also effected his reputation in public life as he is a respectable freedom fighter having unblemished character and narrating various facts which lead to the filing of the suit.

3. The defendant filed a written statement by setting up a counter-claim for a sum of Rs.3,00,000/- alleging that the tractor trailer and other agricultural implements which are in the custody of the plaintiff belong to the defendant and he refused to handover the same and make them used for wrongful gain, therefore, he suffered heavy loss due to the dispute with the plaintiff and the said loss has to be compensated by the plaintiff, which was assessed at Rs.3,00,000/-. To which the plaintiff filed a rejoinder.

4. The plaintiff filed IA No.248 of 1999 under Order VIII, Rule 6-C read with Section 151 of the Code of Civil Procedure (for short 'the Code') to dismiss the counter-claim set up by the respondent/ defendant in OS No.34 of 1998 stating that the counter-claim is not maintainable as the same was arises under a different cause of action. On contest by the respondent-defendant, the lower Court by the impugned order dismissed the petition holding that it is too early and pre-mature to say the counter-claim putforth by the respondent-defendant is not maintainable which can be determined only after a full-fledged trial.

5. Sri K. Vijaya Rao, learned Counsel appearing for the petitioner vehemently contended that unless a set-off is pleaded as contemplated under Order 8, Rule 6-A of the Code, counter claim cannot be maintained. Under Order 8, Rule 6-C, it is the duty of the Court to decide the maintainability of such counter-claim as a preliminary issue and the cause of action pleaded by, the plaintiff is only for civil damages caused due to the defamatory statements made in the complaint lodged by the respondent-defendant with the CBCID and the cause of action pleaded in

the counter-claim is a different one. In view of the same, according to the learned Counsel the lower Court is not justified in dismissing the counter-claim.

6. On the other hand, Sri D. Linga Rao, learned Counsel appearing for the respondent contended that the lower Court has got jurisdiction to decide the counterclaim on a preliminary issue and unless it exceeds the jurisdiction it is not open for the revisional Court to interfere with the impugned order. The question whether counter-claim arises on the same transaction or different transaction has to be decided only after a full-fledged trial basing on the evidence, oral or documentary, let in by the parties. Therefore, the lower Court was right in holding that it is premature to decide the counter-claim whether the same is maintainable or not and holding so dismissed the petition. He also placed reliance on the following judgments.

1. In the matter of BHP & V. Limited, Visakhapatnam, AIR 1985 AP 207, and

2. Manick Chandra Nandy v. Debdas Nandy, : AIR 1986 SC446 .

7. In order to appreciate the rival contentions, it is necessary to have look at the provisions of Order VIII, Rules 6-A(1) and 6-C of the Code which read as follows:

'6-A. (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, and 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. xxxx;3. xxxx;4. xxxx . 6-C. Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply-to the Court for an order that such counterclaim may be excluded, and the Court may on the hearing of

such application make such order as it thinks fit.

8. Order VIII, Rule 6-A(1) of the Code gives a right to the to set-up counterclaim against the claim of the plaintiff in respect of a cause of action accruing to the defendant either before or after the filing of the suit but before the defendant delivered his defence or before the time limited for delivering his defence has expired. Rule 6-C of Order VIII enables the plaintiff to make his objections with regard to the maintainability of the counter-claim at any time before the issues are settled in relation to the counter-claim and on hearing of such application the Court may pass order if it thinks fit.

9. The Apex Court in Mahendra Kumar v. State of MP, : [1987]3SCR155 , while considering the provisions of Order VIII, Rule 6-A(1) of the Code held that counter-claim filed by the defendant after he had filed the written statement is not barred and held what is laid down under Rule 6-A (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. If the counter-claim which is treated as a suit under Section 3(2)(b) of the Limitation Act had been filed within three years from the date of accrual to them of the right to sue, it cannot be said that it is not maintainable.

10. Following the above decision, the Bombay High Court in Daita Bandwadale v. Sridhar Payagonda Patil, : AIR1992 Bom422 , rejected the contention that the lower Court rightly excluded the counterclaim in exercise of power under Order VIII, Rule 6-C of the Code and allowed the revision holding after extracting the relevant provision as follows:

'A perusal of the above provision makes it clear that there is no requirement that the counter-claim must be of the same nature as the claim of the plaintiff or that it must be arising out of the same transaction. In fact the words ' any right or claim in respect of the cause of action accruing to the defendant against the plaintiff make it very clear that the counter-claim is not subjected to the same restriction as a set off is under Order VIII, Rule 6 of the Code of Civil Procedure. Shri Bagwe, the learned Counsel did contend that even a counterclaim falling under Rule 6-A must be of the same nature as a set off falling under Rule 6. On a plain reading of the

provisions of Rule 6-A, it is not possible to accept this contention of Shri Bagwe. Further the concluding words of sub-rule (1) of Rule 6-A reading 'whether such counter-claim is in the nature of a claim for damages or not' make it abundantly clear that the counter-claim may be a claim in the nature of damages or may not be so ' (para 8)

11. Considering the provisions of Order VIII, Rule 6-A(1), the Apex Court in *Gurhachan Singh v. Bhagsingh and others.*, : AIR 1996 SC1087 , held that in a suit for injunction, counter-claim for possession could also be entertained by operation of Order VIII, Rule 6-A(1) of the Code of Civil Procedure.

12. In *Jagmohan Chawla v. Dera Radha Swami Satsang*, : AIR 1996 SC2222 , the Apex Court while deciding the question 'Whether in a suit for injunction, counterclaim for injunction in respect of the same or a different property is maintainable? Whether counter-claim can be made on different cause of action' held as follows:

'.....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 only limitation is that the cause of action should arise before the time fixed for filing the writing 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 aver 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..... (para5)

13. In view of the same, I do not find any merit in the contentions advanced by the learned Counsel for the petitioner for the reason that the cause of action for the defendant accrued before filing the written statement. The lower Court has not committed any jurisdictional error or illegality in dismissing the IA filed by the plaintiff under Order 8, Rule 6-C read with 151 of the Code warranting interference by this Court in exercise of revisional jurisdiction.

14. The revision petition is accordingly dismissed. No costs.

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