

Prem Narayan Vs. Ram Vilash

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Court : Madhya Pradesh

Decided On : May-02-1991

Reported in : 1991(0)MPLJ841

Judge : B.C. Varma, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 8, Rule 6A

Appeal No. : Civil Revision No. 13 of 1990

Appellant : Prem Narayan

Respondent : Ram Vilash

Advocate for Def. : R.K. Samaiya, Adv.

Advocate for Pet/Ap. : T.S. Ruprah, Adv.

Disposition : Revisions dismissed

Judgement :

ORDER

B.C. Varma, J.

1. This revision is by the defendant whose two applications, one for making a counter-claim under Order 8, Rule 6-A, C.P.C., and the other for amendment of the written statement for incorporating set-off under Orders 8, Rule 6, C.P.C. have

been rejected by the trial Court.

2. It is not disputed that the non-applicant/plaintiff's suit is one for declaration of his title to certain property and also for an injunction, restraining the applicant from interfering with the non-applicant's possession over that property. The defendant-applicant filed a written statement, contesting the non-applicant's claim. After filing of the written statement and when some proceedings in the suit took place, the defendant-applicant made these two applications. While rejecting the first application for raising a counter-claim, the lower Court has observed that since the applicant has already filed a written statement, the counter-claim cannot be entertained. In my opinion, in taking such a view, the trial Court committed an error in not appreciating the correct import of provisions contained in Order 8, Rule 6-A, C.P.C. It will be useful to quote the provision of that Rule. It reads as follows :--

'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.'

A defendant, who wants to avail of the above provision under Rule 6-A, has to lay such counter-claim before delivering his defence or before the time limited for delivering his defence has expired. This will be irrespective of the fact whether the cause of action for such a counter-claim accrued to the defendant and against the plaintiff, either before or after the filing of the suit. It will, thus, be seen that in terms of the above provision, it is permissible to file a counter-claim even after filing of the written statement, provided, of course, that the cause of action has accrued before the delivery of defence or before the time limited for delivering the defence has expired. The Court, therefore, will not be justified in keeping out of consideration the counterclaim, merely because it came after the filing of the written statement, i.e., after delivering the defence, if the cause of action has

accrued before filing of the written statement or before the time limited for delivering the defence has expired. This is how the provision has been interpreted by the Supreme Court in Mahendra Kumar v. State of M.P., AIR 1987 SC 1395. In para 15 of the report, it is observed that as the cause of action for counter-claim in that case had arisen before the filing of the written statement, the counter-claim was maintainable, although made after the defendant had filed his written statement.

3. In the instant case, the written statement was filed on 16-1-1987, while the counter-claim was filed on 16-10-1989. However, the cause of action was stated to have accrued on 14-10-1988 and thereafter, i.e. apparently after the filing of the written statement. That being the position, the counter-claim could not have been entertained because the cause of action for that counter-claim arose after the filing of the written statement.

4. For the aforesaid reasons, I find no infirmity in the impugned order which must be maintained. I am also satisfied that the applicant's other application for amendment, which, in fact, only prays for inclusion of such counter-claim in the written statement has also been rightly rejected.

5. The revision fails and is dismissed, but without any order as to costs.

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