

Ramcharan Sukhlal Vs. Daulat Munniram

Ramcharan Sukhlal Vs. Daulat Munniram

SooperKanoon Citation : sooperkanoon.com/507441

Court : Madhya Pradesh

Decided On : Dec-11-1995

Reported in : 1996(0)MPLJ192

Judge : Tej Shankar, J.

Acts : Code of Civil Procedure (CPC) - Sections 9 - Order 6, Rule 17 - Order 8, Rule 6A; Madhya Pradesh Accommodation Control Act, 1961 - Sections 12(1), 37 and 45

Appeal No. : C.R. No. 402 of 1995

Appellant : Ramcharan Sukhlal

Respondent : Daulat Munniram

Advocate for Def. : Ramji Sharma, Adv.

Advocate for Pet/Ap. : B.G. Apte, Adv.

Judgement :

ORDER

Tej Shankar, J.

1. The plaintiff has preferred this revision petition against the order dated 28-3-1995 passed by the Tenth Civil Judge, Class II, Gwalior, whereby the amendment

application moved by the respondent was allowed.

2. Briefly narrated the facts are that a suit was filed by the petitioner for eviction of the defendant from the accommodation in dispute on the ground of Section 12(l)(a), 12(l)(b), 12(l)(e), 12(l)(i) and 12(l)(k) of the M. P. Accommodation Control Act, 1961 (hereinafter referred to as the Act). The defendant contested the claim and filed written statement. The case proceeded. The Court fixed 19-9-1994 as last date for producing the defendant's evidence but the defendant examined himself on 24-9-1994. Again the Court gave one more chance to produce only one witness fixing 9-11-1994. On that date instead of examining the witness an application under Order 18, Rule 17, Civil Procedure Code was moved which was allowed and the case was fixed on 9-12-1994. On that date an application under Order 6, Rule 17 and another under Order 39, Rules 1 and 2, Civil Procedure Code were moved. The learned trial Court allowed the amendment application introducing counter claim by the impugned order. Hence this petition.

3. The learned Counsel for the petitioner contended that the application moved by the defendant-respondent for amendment of written statement consisted of two parts. Through this amendment the defendant sought to make certain averments in his written statement. In para 1 new facts had been alleged relating to a cause of action with respect to a relief of physical possession. The amendment sought in paras 2, 3 and 4 relating to subsequent event and certain other facts. In para 5 the amendment sought related to the relief of injunction and possession. He urged that the amendment prayed in paras 1 and 5 by the defendant could not be allowed as it amounts to a fresh cause of action. The learned Counsel referred to the provisions of Order 8, Rule 6A, Civil Procedure Code and urged that counter-claim can be permitted if it is in respect of a cause of action accruing to the defendant against the plaintiff either before or after filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired. The contention is that these two paragraphs relate to a fresh cause of action which accrued after the filing of the written statement and as such it could not be permitted. The Court exceeded its jurisdiction in allowing it.

4. The learned Counsel for the respondent vehemently argued that the counter-claim can be raised even after filing of the written statement. He urged that the cause of action in respect of which these averments had been made had arisen earlier. It is not the date which is material. He placed reliance upon AIR 1967 SC 96, A.K. Gupta and Sons v. Damodar Valley Corporation and various other authorities, mentioned below, during the course of his arguments. His contention is that the amendment has rightly been allowed :

(1) AIR 1969 SC 1267, (2) AIR 1974 SC 1178, (3) AIR 1975 SC 1049, (4) AIR 1968 SC 1165

5. The only point that needs consideration in this revision petition is as to whether the averments made in the amendment application relating to counter-claim could be allowed by the learned trial Court or not. The learned Counsel appearing for the respondent stressed his argument at great length and cited a number of authorities even though the principle that counter-claim can be raised at what stage is established. I need not go in all the authorities cited by the learned Counsel for the respondent but I may mention that I have perused all the authorities cited by the learned Counsel. The learned Counsel also placed reliance on two unreported decisions of this Court in C.R. No. 452/95, Murarilal v. Raghuvir Singh and Ors. decided on 28-8-1995 and C.R. No. 913/83, Saw Singh v. Moorti Shri Dwarkadishji Maharaj and urged that this Court has allowed a counter-claim even after filing of the written statement in both these cases. It is not in dispute that the present suit has been filed by the plaintiff for eviction on the ground mentioned hereinabove. Copy of the amendment application has been filed by the petitioner as Annexure P-4 along with memo. If we peruse paragraph 1 we find that the averments constituting counter-claim have been made in this paragraph. The allegations made in earlier part of this paragraph are with respect to non-repairing of the accommodation in dispute. It has been alleged that the plaintiff right from the beginning did not fix door of the small Kothri due to which he was deprived of its use. Similarly, rain water came during rainy season and hence he could not use the tin-shed. The plaintiff did not change it in spite of repeated requests. The plaintiff also did not permit him. He was, therefore, praying for counter-claim. The plaintiff also knowingly in order to harass him demolished the

room of the kitchen on 4-12-1994 and took forcible possession of buffaloes. He was threatening to forcibly evicting him from the accommodation. Hence he was entitled to a relief of mandatory injunction as well as to prohibitory injunction and/or recovery of possession. These averments clearly go to show that the complained acts were performed by the plaintiff after filing of the written statement. The provisions of Order 8, Rule 6A are very clear and they permit a counter-claim with respect to a cause of action which arose against the claim of 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. In this way, the important fact that has to be considered is that the cause of action must have accrued before the written statement is filed or before the expiry of the time for delivery of his defence has expired. Now we have to see as to what constitutes cause of action and whether cause of action had accrued before the filing of the defence or before the time limited for delivery of defence had expired. The contention of the learned Counsel for the respondent is that the words 'cause of action' is not the date but it is the bundle of facts which the plaintiff is required to establish in order to get a relief. There cannot be two opinions about this definition of cause of action. Certainly it is not the date which is material. All the bundle of facts constitutes the cause of action which the plaintiff is required to establish in order to obtain a relief. In AIR 1967 SC 96 (supra) the Apex Court considered the question as to when an amendment should or should not be allowed. It was observed :

'In the matter of allowing amendment of pleading the general rule is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on the new cause of action is barred. Where, however, the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts merely to a different or additional approach to the same facts the amendment is to be allowed even after expiry of the statutory period of limitation.'

In this very authority the Apex Court also held that 'The expression 'cause of action' in this context does not mean every fact which is material to be proved to entitle the plaintiff to succeed. The expression only means a new claim made on a

new basis constituted by new facts. The words new case mean new set of ideas. Thus no amendment will be allowed to introduce new set of ideas to the prejudice of any right acquired by any party by lapse of time.' Thus, in view of this authority if a new cause of action has arisen a party cannot be allowed to set up a new case particularly when a suit on new cause of action is barred. The meaning of words 'cause of action' has also been defined as mentioned above. Here, in the case in hand, the defendant, as mentioned above, made an averment with respect to an act of plaintiff through which the kitchen was demolished. It will not be out of place to mention here that the defendant also alleged, as mentioned above, that the plaintiff did not fix the door right from the beginning and in that direction relief for mandatory injunction is also sought to be added. As the averment has been made with respect to non-fixation of door right from the beginning, it may be contended that the cause of action in that regard accrued before the filing of written statement but I shall show hereinafter that there is another hurdle in allowing that part of the allegations and the connected relief. So far as the relief of demolition of kitchen is concerned, it cannot be doubted that this cause of action accrued to the defendant on the date mentioned by him because prior to that date it cannot be said that there was any cause of action in that regard. In AIR 1987 SC 1395, Mahendra Kumar v. State of M. P. over which much reliance has been placed by the learned counsel for the respondent, the Apex Court laid down a principle as to what should be allowed as a counter-claim. It was a case under the Treasure-trove Act. After narrating the facts the Apex Court concluded that in that case the cause of action of counter-claim had arisen before filing of the written statement and hence the counter-claim was maintainable (see para 15). Thus, the ratio of this case is that the cause of action for counter-claim must have arisen before filing of the written statement. This case was considered by this Court while deciding Civil Revision No. 452/95 on 28-8-1995. This unreported decision has also been relied upon by the learned Counsel for the respondent as said earlier. While considering this case in the background of the facts of that case, this Court took the view that cause of action had accrued before filing of the written statement and hence the counter-claim was allowed. This unreported decision too does not help the learned Counsel for the respondent because the principle laid down by the Apex Court in Mahendra Kumar's case has been followed as it is the law of the land. The other

decision of this Court in Civil Revision No. 913/83 decided on 4-9-1985 is also not helpful to the learned Counsel because, photocopy of which has been provided by the learned Counsel, does not show that the question when the cause of action accrued i.e. before filing of the defence or before the expiry of the time for filing of the defence or not was not taken into consideration. It appears that it was neither raised nor considered. A case is an authority on the point which is raised and considered amounting to ratio. Thus, it is of no help to the learned Counsel. Unless it is shown that the cause of action had accrued before filing of the written statement or the expiry of the time for defence counter-claim cannot be permitted. No doubt, it is true that counter-claim can be permitted even after filing of the written statement but the basic thing is that the cause of action must have accrued, as stated above, within the meaning of Order 8, Rule 6A, Civil Procedure Code. A number of authorities relied upon by the learned Counsel for the respondent on the point that counter-claim can be permitted even after filing of the written statement need not be gone into. As far as the allegations made relating to non-fixation of door right from the beginning are concerned, it may be mentioned that there is a specific provision in this regard in Section 37 of the M. P. Accommodation Control Act and the tenant has remedy available to him under Section 37. Section 45 bars the jurisdiction of Civil Courts with respect to the matters mentioned therein. Thus, if the plaintiff did not fix the door the remedy is by way of a petition under Section 37 as jurisdiction of Civil Courts is barred by Section 45. Thus, no amendment could be allowed with respect to an allegation on the basis of which the jurisdiction of Civil Courts is barred. In this way, even if there was any cause of action with respect to non-fixation of door the defendant should have approached the proper forum. In this view of the matter, the contention that cause of action with respect to that part arose before the filing of the suit and hence counter-claim can be permitted is untenable. I have already said above, that the cause of action with respect to dismantling of kitchen arose after filing of the written statement and as such it could not be permitted. I, therefore, agree with the learned Counsel for the revisionist that the learned trial Court committed an error in allowing the amendment in the written statement pertaining to the counter-claim mentioned in para 1 and relief alleged in para 5 of the application. The revision petition must, therefore, succeed in part.

6. The revision is accordingly partly allowed. The impugned order is modified to this extent that the amendment prayed by the defendant in paras 1 and 5 of the application is rejected. Costs shall, however, be borne by the parties.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com