
(2023) 09 GAU CK 0004

Gauhati High Court

Case No: Civil Revision Petition (IO) No. 300 Of 2022

Vinod Kumar Kedia

APPELLANT

Vs

M/S. J N Agency And
15 Ors

RESPONDENT

Date of Decision: Sept. 7, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 227
- Code of Civil Procedure, 1908 - Order 8 Rule 6A

Citation: (2023) 09 GAU CK 0004

Hon'ble Judges: Parthivjyoti Saikia, J

Bench: Single Bench

Advocate: G.N. Sahewalla, K.N. Choudhury

Final Decision: Allowed

Judgement

1. Heard Mr. G.N. Sahewalla, learned senior counsel appearing for the petitioner. Also heard Mr. K.N. Choudhury, learned senior counsel

representing the respondents.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 07.11.2022 passed by the learned Civil Judge ,

Tinsukia in Misc.(J) Case No.81/2022 arising out of Title Suit No.52/2019.

3. The short question that arises in this revision petition is as to whether after framing of issues, a counter-claim can be accepted by a civil court.

4. Mr. Sahewalla has relied upon a judgment of Supreme Court that was delivered in Ashok Kumar Kalra v. Surendra Agnihotri, (2020) 2 SCC 394.

Paragraph 21 of the judgment is quoted as under:

“21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement,

rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file

the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit

for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the

counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

(i) Period of delay.

(ii) Prescribed limitation period for the cause of action pleaded.

(iii) Reason for the delay.

(iv) Defendant's assertion of his right.

(v) Similarity of cause of action between the main suit and the counterclaim.

(vi) Cost of fresh litigation.

(vii) Injustice and abuse of process.

(viii) Prejudice to the opposite party.

(ix) And facts and circumstances of each case.

(x) In any case, not after framing of the issues.”

5. Mr. Choudhury, on the other hand relied upon a decision that was delivered in Vijay Prakash Jarath v. Tej Prakash Jarath, (2016) 11 SCC 800.

Paragraph 10 of the judgment is quoted as under:

“10. It is quite apparent from the factual position noticed hereinabove, that after the issues were framed on 18-10-1993, the counterclaim was filed

by the appellants before this Court (i.e. by Defendants 3 and 4 before the trial court) almost two-and-a-half years after the framing of the issues.

Having given our thoughtful consideration to the provisions relating to the filing of counterclaim, we are satisfied, that there was no justification

whatsoever for the High Court to have declined, the appellant before this Court, from filing his counterclaim on 17-6-1996, specially because, it is not a

matter of dispute that the cause of action, on the basis of which the counterclaim was filed by Defendants 3 and 4, accrued before their written

statement was filed on 11-11-1992. In the present case, the respondent-plaintiff's evidence was still being recorded by the trial court, when the

counterclaim was filed. It has also not been shown to us, that any prejudice would be caused to the respondent-plaintiff before the trial court, if the

counterclaim was to be adjudicated upon, along with the main suit. We are of the view, that no serious injustice or irreparable loss (as expressed in

para 15 of Bollepanda P. Poonacha case [Bollepanda P. Poonacha v. K.M. Madapa, (2008) 13 SCC 179]), would be suffered by the respondent-

plaintiff in this case.Ã¢â€

6. I have considered the submissions made by the learned counsels of both sides.

7. Vijay Prakash Jarath (supra), is a two Judges Bench judgment whereas Ashok Kumar Kalra (supra), is a three Judges Bench judgment. Moreover,

it is a judgment of 2020 whereas the judgment relied upon by Mr. Choudhury is a 2016 judgment. Naturally, three Judges Bench judgment and the

latest one would prevail. Supreme Court has laid down that after framing of issues, counter-claim under Order 8 Rule 6A of the Code of Civil

Procedure cannot be filed.

8. Therefore, the learned trial court has committed error while accepting the written statement filed by the respondents. The impugned order dated

07.11.2022 whereby the counter-claim filed by the respondents was accepted, is set aside.

9. The revision petition is allowed and disposed of accordingly.