

(2013) 11 ADJ 146 : (2013) 101 ALR 774 : (2014) 122 RD 292

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 10255 of 2009

Charan Singh

APPELLANT

Vs

Radhey Shyam Arora
and Others

RESPONDENT

Date of Decision: Sept. 18, 2013

Citation: (2013) 11 ADJ 146 : (2013) 101 ALR 774 : (2014) 122 RD 292

Hon'ble Judges: Sanjay Misra, J

Bench: Single Bench

Advocate: Salil Kumar Rai, for the Appellant; R.K. Khanna, for the Respondent

Judgement

Sanjay Misra, J.

Heard Sri Salil Kumar Rai, learned counsel for the plaintiff petitioner and Sri R.K. Khanna, learned counsel for the

defendant respondent No. 1.

This writ petition is directed against the order dated 12.3.2008 passed by the Civil Judge (Jr. Div.) Jyotiba Phule Nagar in Original Suit No. 288

of 1997 (Charan Singh and another v. Radhey Shyam Arora and others), whereby the amendment application Paper No. 91A filed by the

defendant No. 1 has been allowed as also against the revisional order dated 20.12.2008 passed by the District Judge, Jyotiba Phule Nagar in Civil

Revision No. 34 of 2008 (Charan singh and another v. Radhey Shyam Arora and others), whereby he has dismissed the revision of the plaintiff

petitioner.

Learned counsel for the petitioner has submitted that by the amendment application Paper No. 91A the defendant No. 1 sought amendment of his

written statement. There are two submissions made by learned counsel for the plaintiff petitioner against the impugned orders. The first is that in the

amendment application the cause of action was shown as 10.9.2005 whereas the defendant No. 1 had filed his written statement in the Court on

14.10.2005, therefore, the cause of action for bringing the amendment was not subsequent to filing of the written statement and hence the finding to

the contrary recorded in the impugned order is illegal.

2. The second submission is that the amendment application was filed on 19.4.2007 wherein certain paragraphs were sought to be added in the

written statement and a further relief of permanent injunction against the plaintiff was also sought to be added in the written statement. He states

that even if the defendant No. 1 was entitled to amend his written statement, he could not incorporate the counter claim by adding a relief in the

written statement. He refers to the provision of Order VIII Rule 6 of the CPC which relates to the particulars of set-off to be given in the written

statement and Rule 6A of Order VIII of the CPC relating to counter claim by the defendant.

3. According to him counter claim can be set up of any claim with respect to a cause of action accruing to the defendant against the plaintiff either

before or after filing the suit but before the defendant has delivered his defence or before the time limit for delivering his defence has expired.

According to learned counsel for the petitioner, clearly the written statement was filed on 14.10.2005 and the cause of action for bringing the

counter claim was 10.9.2005 which is prior to filing of the written statement whereas the counter claim was brought on 19.4.2007. He states that

the impugned orders are illegal for the aforesaid two reasons. According to him the revisional Court has committed the very same error and hence

both the orders are liable to be set aside.

4. Sri R.K. Khanna, learned counsel for the defendant respondent No. 1 has submitted that the revisional Court has clearly recorded that the

purpose of an amendment and counter claim is to be avoid implicitly of the suit and since the order of allowing the amendment application which

includes the counter claim has not caused any irreparable injury to the plaintiff the trial Court has rightly exercised its jurisdiction in allowing the

same.

5. Having considered the submission of learned counsel for the parties and perused the record, the amendment application has been filed as

Annexure-3 to the writ petition. It seeks amendment in the written statement. The amendments sought are addition of paragraphs 19 to 23 in the

written statement. A further paragraph 24 has also been included in the amendment application which reads as quoted hereunder:

The amendment application was clearly one under Order VI Rule 17 of the CPC but in view of paragraph 24 it became a counter claim under

Order VIII Rule 6A of the Code of Civil Procedure. Therefore, clearly if the amendment is allowed, the written statement would include the

amended paragraphs including the counter claim as mentioned in paragraph 24 of the amendment application.

6. A counter claim is not a part of the written statement. It is to be filed as per the provision of Order VIII Rule 6A of the CPC which clearly

indicates that the counter claim shall have the same effect as a cross suit to enable the Court to pronounce the final judgement in the same suit

relating to both on the original claim as also counter claim. The said provision also indicates that the plaintiff would be at liberty to file written

statement in answering of the counter claim of the defendant. Clause 4 of the said Rule provides that counter claim shall be treated as a plaint and

governed by the Rule applicable to plaints.

Clearly the amendment application under Order VI Rule 17 of the CPC filed by the defendant No. 1 for amending his written statement could not

include the counter claim as mentioned in paragraph 24 of the amendment application. The counter claim could be filed under Order VIII Rule 6A

of the CPC and by complying the conditions prescribed therein.

The Court below has therefore, committed an illegality in allowing the application 91A filed by the defendant which has the effect that the amended

written statement by adding certain additional paragraph also incorporates therein the counter claim. The written statement cannot be considered to

be a plaint. The revisional Court has committed the same illegality by affirming the order passed by the trial Court.

In view of the aforesaid circumstances, the impugned orders cannot be sustained. The order dated 12.3.2008 passed by the Civil Judge (Jr. Div.)

Jyotiba Phule Nagar in Original Suit No. 288 of 1997 (Charan Singh and another v. Radhey Shyam Arora and others) as also the revisional order

dated 20.12.2008 passed by the District Judge, Jyotiba Phule Nagar in Civil Revision No. 34 of 2008 (Charan singh and another v. Radhey

Shyam Arora and others) are set aside. The writ petition stands allowed.

No order is passed as to costs.