

(2007) 01 AHC CK 0052

Allahabad High Court

Case No: None

Kamal Kishor Khullar

APPELLANT

Vs

IInd Addl. Civil Judge (J.D.) and
Others

RESPONDENT

Date of Decision: Jan. 5, 2007

Acts Referred:

- Limitation Act, 1963 - Section 10, 11, 12, 13, 14

Citation: (2007) 2 ADJ 396 : (2007) 2 AWC 1085

Hon'ble Judges: S.N. Srivastava, J

Bench: Single Bench

Judgement

S.N. Srivastava, J.

This writ petition is directed against the order dated 23rd February, 2001 passed by the Additional Civil Judge (J.D.), Gorakhpur, allowing amendment of defendant in the written statement as well as counter claim and permitting plaintiff to file written statement to the counter claim within 15 days and the revisional court's order dated 26th March, 2001 dismissing the revision preferred against the said order.

2. From perusal of the record, it transpires that the plaintiff filed a suit for injunction to restrain defendant from opening the door as well as restraining defendant from making any construction over the land in suit. Further relief claimed in the plaint was to issue a mandatory injunction to defendant to close the door and windows at the places mentioned in the plaint map. A written statement was filed by the defendant on 13.5.1991 denying plaintiffs allegation in the plaint. It further transpires from the record that the defendant filed an amendment application to amend the written statement as well as to add certain reliefs as counter claim in the year 1998. An objection was filed by the plaintiff to the amendment application. By an order dated 23.2.2001, impugned by way of instant writ petition, amendments sought for were allowed and counter claim was also incorporated in the written statement. A revision preferred against the said order was also dismissed.

3. Heard learned Counsel for the parties.

4. Learned Counsel for the petitioner urged that according to own averments made by defendant in the amendment application, the cause of action of counter claim arose in June, 1991 whereas application for amendment to add counter claim was moved on 20.11.1998. He further urged that according to Order VIII, Rule 6A(4) of the C.P.C., the counter claim shall be treated as a plaint and governed by the rules applicable to plaints, hence Article 113 of the Indian Limitation Act will be applicable for the reliefs claimed for by adding counter through the amendment application and maximum period of limitation is three years for the reliefs claimed as counter claim introduced through the amendment application which is barred by time and no such counter claim could be permitted to be introduced by way of amendments. It was further urged that the order passed on amendment application by which counter claim was also added may be set aside being barred by time. He relied upon Order VIII, Rule 6A(4) of the C.P.C. and Article 113 of the Indian Limitation Act.

5. In reply to the arguments of learned Counsel for the petitioner, Sri R.B. Tripathi, learned Counsel for opposite party-defendant, did not dispute the fact that the cause of action arose in June, 1991 and amendment application by which counter claim was introduced was moved on 20.11.1998. He also does not dispute proposition of law that limitation for counter claim by which defendant prayed to grant mandatory injunction is three years as envisaged under Article 113 of the Indian Limitation Act. He further urged that by the amendment application a number of other pleadings in the written statement were also sought to be amended and the amendments introduced through the amendment application allowed by the trial court and affirmed by the revisional court deserve to be maintained and the writ petition is liable to be dismissed.

6. The relevant date on which the question of limitation could be considered is the date of presentation of the plaint. In case the defendant wanted to amend written statement by moving an amendment application and to introduce counter claim, the relevant date would be the date of presentation of the application for amendment. As a counter claim is treated as plaint for the relief claimed, it is necessary for the Court to consider the date of its presentation.

7. Order VIII, Rule 6A(4) of the C.P.C. is relevant to be considered for the issue involved in the present case, the same is being quoted below for ready reference:

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

8. Order VIII, Rule 6A(4) of the C.P.C. speaks that counter-claim shall be treated as plaint and governed by the rules applicable to the plaints.

9. In this regard Sections 3(1) and 3(2)(b)(ii) of the Limitation Act are relevant, same are being reproduced below for ready reference:

3(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. 3(2)(b)(ii) In case of a counter claim, on the date on which the counter claim is made in Court.

10. From perusal of above provisions, it is clear that in case counter claim which shall be treated as plaint is not presented within time, the same shall also be dismissed as barred by time.

11. The only provision brought to my notice by learned Counsel for the petitioner is Article 113 of the Indian Limitation Act. So far as suits for mandatory injunction are concerned, which also provide limitation of three years from the date when the right to sue accrues. In the present case, the right to sue accrued in June, 1991 and application for amendment in written statement for adding counter claim was moved on 20.11.1998, that was beyond three years and as such the counter claim was barred by time. The question of limitation was specifically raised in the objection to amendment and as such it was duty of courts below to record a finding on the question of limitation. In any case no decree could be passed as the amendment application by which written statement was sought to be amended to plead counter claim was barred by time and the same was liable to be rejected to that extent.

12. This Court after carefully considering arguments of learned Counsel for the parties and materials available on record as well as relevant law is of the view that the amendment application by which counter claim was introduced for a decree of mandatory injunction was barred by time on the date of presentation of amendment application and the courts below erred in law in allowing the counter claim to be pleaded by amending written statement. The orders of the courts below to that extent is vitiated in law and is liable to be set aside. So far as other amendments are concerned, neither it was challenged by petitioner nor any error of law is apparent on the face of record was brought to the notice of the Court. These are the matters relating to minor amendments in the written statement as defence and the order allowing amendment in written statement was rightly passed. The order to that extent is liable to be maintained. This Court has expressed opinion on the counter claim allowed to be added through the amendment in the written statement. However, in case any counter claim is filed along with the written statement, the same may be considered in accordance with law.

13. Accordingly writ petition succeeds and is allowed in part and the impugned order dated 23rd February, 2001 to the extent of amending written statement by adding counter claim is quashed. The rest of order allowing other amendments in the written statement is maintained. Further, it is also directed that since the suit is lingering for the last about 16 years, the same shall be heard and decided within a year from the date of production of a certified copy of this order.

No order as to cost.