(1993) 10 KL CK 0050

High Court Of Kerala

Case No: S.A. 736 of 1988-D

Kerala State Financial Enterprises Ltd.		APPELLANT
	Vs	
Purushothama Rao		RESPONDENT

Date of Decision: Oct. 5, 1993

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 6C, Order 8 Rule 6E

Citation: (1993) 2 KLJ 902

Hon'ble Judges: M.M. Pareed Pillay, J

Bench: Single Bench

Advocate: A.M. Shaffique and Antony Dominic, for the Appellant; A. Rama Prabhu and C.P. Ravikumar, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Pareed Pillay, J.

Defendant is the Appellant. Plaintiff, a subscriber of a chitty conducted by the Defendant prized the kuri on 11th May 1977 for Rs. 6,300. Plaintiff''s case is that the prized amount was not paid by the Defendant, that he had remitted Rs. 2,100 towards 14 instalments and that despite repeated demands and lawyer notice the Defendant did not pay the amount due to him. Defendant filed written statement admitting that the Plaintiff was a subscriber to the chitty and that he bid the same as stated in the plaint.

It is contended that he did not produce sufficient security as per the terms of the chitty and so Defendant was forced to deposit the prized amount in the District Treasury, Ernakulam on 8th July 1977. According to the Defendant, the Plaintiff is not entitled to recover the suit amount and that the Defendant is entitled to recover full amount of future instalments after deducting the 14 instalments remitted by the Plaintiff. Defendant filed counter-claim to the effect that the Plaintiff having

defaulted future subscriptions is not entitled to recover the amount claimed in the suit and that Defendant is entitled to a decree for Rs. 600 from him.

2. The learned Munsiff rejected the Defendant''s contention that the Plaintiff failed to furnish security for the prized amount. The documentary evidence in the case shows that the Plaintiff was pressing his contentions before the Defendant for the payment of the prized, amount from the date of bidding the chitty in 1977. Exts, A-2, A-5 and A-6 are letters addressed to the Plaintiff by the Defendant. In Exts. A-5 and A-6 Defendant has no case that security offered by the Plaintiff was found insufficient. Learned Munsiff held that such a contention was taken for the first time in Ext. A-2 letter. The learned Sub Judge has agreed with the aforesaid finding of the Munsiff. Courts below held that the evidence both oral and documentary disproved the contention of the Defendant that the prized amount was not given to the Plaintiff as he failed to furnish proper security. The said findings of fact cannot be interfered by this Court.

3. Learned Counsel for the Defendant next contended that Plaintiff did not file any objection to the counterclaim of the Defendant and hence it should have been allowed by the Trial Court. Counsel submitted that failure to give a reply to the counter-claim by the Plaintiff is a virtual admission, of the same and hence the Trial Court was bound to allow it. Reference is made to Order 8, of Rule 6E of the CPC Order 8, Rule 6E provides that if Plaintiff makes default in putting in a reply to the counterclaim made by the Defendant, the Court may pronounce judgment against the Plaintiff in relation to the counterclaim made against him, or make such order in relation to the counter-claim as it thinks fit. Order 8, Rule 6C enables the Plaintiff to raise a contention that the counter-claim made by the Defendant is not the answer to the suit and the Defendant has to institute an independent suit for the relief he wants. It should be done before issues are settled. When the suit claim is considered along with the counter-claim of the Defendant, failure on the part of the Plaintiff in replying to the counter-claim by itself cannot be taken as a ground to allow the same especially when, the averments in the plaint sufficiently clearly answer the material points mooted by the Defendant in the counter-claim. Order 8, Rule 6E is not couched in such a manner that the Court has no option but to allow the counter-claim of the Defendant when no reply is given by the Plaintiff. It only says that the Court may pronounce the judgment against the Plaintiff in relation to the counter-claim or make such order as it deems fit. In view of the counter-claim, the Court has necessarily to consider it also when the suit claim is considered. Though it is open to the Court to pronounce the judgment against the Plaintiff in relation to the counter-claim or make such order in relation to it as it deems proper and fit, pleadings in the plaint and the evidence in the case cannot be ignored merely on the ground that the Plaintiff has not given a reply to the counter-claim.

4. Contention of the Defendant that the failure on the part of the Plaintiff to put in a reply to the counter-claim would automatically entail allowing of the counter-claim is

not tenable. The suit claim and the counter-claim were considered by the Courts below and they held that the suit claim has to be allowed and counter-claim has to be rejected. Failure of the Plaintiff to put in a reply to the counterclaim cannot form the sole basis to allow the counter-claim. In a case where the counter-claim is found not sustainable having considered the pleadings and evidence on both sides the Court can reject the same despite Plaintiff''s failure to put in a reply.

5. As the Courts below have considered the entire evidence and have concurrently held that Plaintiff is entitled to the suit claim, I hold that the appeal is devoid of any merit. In the result, the second Appeal is dismissed with costs.