

(2003) 01 BOM CK 0120
Bombay High Court (Nagpur Bench)
Case No: Writ Petition No. 4132 of 2002

Ganu Buradkar

APPELLANT

Vs

Manik Buradkar and Another

RESPONDENT

Date of Decision: Jan. 22, 2003

Acts Referred:

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

Citation: (2003) 4 ALLMR 239 : (2003) 5 BomCR 751 : (2003) 3 CivCC 133 : (2003) 3 MhLj 218

Hon'ble Judges: R.G. Deshpande, J

Bench: Single Bench

Advocate: R.L. Khapre, for the Appellant; S.P. Kshirsagar, for the Respondent

Final Decision: Allowed

Judgement

R.G. Deshpande, J.

Rule, returnable forthwith. With the consent of the parties, matter is taken up for hearing.

2. The petitioner, who is a plaintiff, has initiated a suit for declaration and injunction against the present respondents-defendants claiming a decree for declaration, that the plaintiff is the owner of the field in question. The respondents-defendants appeared and filed their written statement on February 23, 1995. However, having realised that some important and material defence remained to be taken in the written statement and since the counter claim through the written statement was already made, the respondents moved an application on October 5, 2001 for amendment in the counter claim. This application for amendment of the counter claim is for the purpose of inclusion of certain property in the claim, containing that the property purchased on December 30, 1992, March 23, 1989 and April 10, 1989 though appeared to have been purchased by the petitioner in the name of his sons, necessarily was required to be mentioned in the counter claim was tried to be amended through this application. Without going to the details of the property

which is sought to be included in the counter claim, the present petition can be decided particularly when the question raised before this Court is as to whether the learned Judge of the trial Court was justified and right in allowing the amendment to the counter claim.

3. To decide the point in question, it would be appropriate to refer to the provisions of Order VIII, Rule 6-A of the Code of Civil Procedure. This Rule reads as under:--

"6-A. Counter-claim by defendant. -- (1) A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against 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, whether such counter-claim is in the nature of a claim for damages or not :

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

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

The provisos thereof are not material for the purposes of the decision of the present petition. From the above said provisions of Order VIII, Rule 6-A, it is clear beyond doubt that counter claim can be raised at the time of filing of the written statement or if the time for filing of written statement is extended then on that day, but the cause of action is to arise on or before either filing of the suit or in any case on or before the date of filing of the written statement, if extended.

4. The present case has to be decided on the basis of this Rule 6-A of Order VIII of the CPC to find out the possibility of granting such permission of amendment to the counter claim. What is material which is required to be seen is the date on which the cause of action arose for filing such an amendment to the counter claim. Suffice, it is at this stage to refer to paragraph 8-A of this application which is marked as Exh. 55 on the record of the trial Court. This paragraph 8-A of the application specifically states, "the cause of action for the relief of partition and separate possession of the fields described in para 7-A above arose on or about 18-8-2001 when the defendants received the copies of mutation entries of these fields from Talathi concerned and came to know the facts of purchasing the said fields by the plaintiff. The cause of action is continuing and subsisting". This is the precise statement and which is

totally unambiguous in every respect, points out that the cause of action, according to the respondents-defendants, arose on or about 18-8-2001. If this is a positive statement made in the application then there is hardly any scope to consider such an amendment to the counter claim. It is to be borne in mind that the counter claim in any case shall not and cannot be permitted if the cause of action for filing counter claim arose after the first date of filing of the written statement or the extended date therefor. It is clear that the cause of action in the instant matter according to the respondents-defendants themselves, arose after filing of the written statement and the counter claim, which was filed in the year 1995, let apart the fact that it is much after filing date of the Civil Suit.

5. In view of the above specific observations without slightest vacillation of mind, I set aside the order passed by the learned Judge of the trial Court, whereby the amendment to the counter claim is allowed. The order cannot be sustained in the eye of law.

6. Shri Kshirsagar, learned Advocate appearing on behalf of the respondents-original defendants invited my attention to the decision of the Apex Court in the matter of [State of Karnataka Vs. Shree Rameshwara Rice Mills, Thirthahalli](#). Shri Kshirsagar, learned Advocate for the respondents heavily placed his reliance on paragraph 15 of the judgment. In that paragraph, Their Lordships of the Apex Court have interpreted the scope of Rule 6A(1) of Order VIII of Civil Procedure Code. While dealing with the aspect, Their Lordships of the Supreme Court observed that Rule 6A(1) does not, on the face of it, bar the filing of a counter claim by the defendant after he had filed the written statement. What is laid down under Rule 6A(1) is that a counter claim can be filed, provided the cause of action has accrued to the defendant before the defendant delivers his defence or before the time limit if extended, for delivering his defence has expired, whether such counter claim is in the nature of a claim for damages or not. There cannot be any scope to deviate from this opinion. However, I am surprised, as to how the observations of the Supreme Court in para 15 of that judgment help the present respondents-defendants. After reading the whole judgment, it is clear beyond doubt, that in that case also the cause of action to file the counter claim arose much before the filing of the written statement by the defendants in that case. It is clear that the point which is for consideration in the case in hand, was not at all for consideration before the Supreme Court.

7. In the matter of Smt. Shanti Rani Das Dewanjee v. Dinesh Chandra Dey (Dead) by LRs., this provision of Order VIII, Rule 6-A of the CPC was also required to be considered by the Apex Court reported in [Smt. Shanti Rani Das Dewanjee Vs. Dinesh Chandra Day \(dead\) by LRs.](#). The Judgment of the Supreme Court reported in [Mahendra Kumar and Another Vs. State of Madhya Pradesh and Others](#), is also considered in this judgment. From this judgment also, it is clear that the bar of limitation is not there for raising counter claim if the cause of action for such

counter claim arose either before filing of the Civil Suit or before filing of the Written Statement or extended date of filing of Written Statement. However, the question as regards amendment to the counter claim and that too, on the basis of cause of action which are after filing of the original Written Statement was not there. Therefore, this judgment also cannot be said to be of any help to the respondents.

8. In the present matter, what is being sought to be done, is the amendment in the counter claim, on the basis of the cause of action which arose much after filing of the written statement as per the defendants themselves. So far as regards the original counter claim filed is concerned, there is no dispute that it was filed well within time and appeared to have been rightly taken on record. However, amending the counter claim on the basis of the subsequent cause of action, cannot be related back to the date of written statement or the counter claim first filed. In the instant petition, looking at the matter from any angle, it is clear that amending the counter claim by adding certain additional claims that too, the cause of action which arose much after the filing of the written statement or counter claim, would virtually amount to filing of fresh counter claim after the limited period under Order VIII, Rule 6-A was over. In the opinion of this Court such a counter claim by way of amendment to the original counter claim, in no case can be permitted muchless when the cause of action for the amended counter claim arose after the date of filing of the written statement or after the date of raising of the first counter claim. In the opinion of this Court, Shri Kshirsagar wrongly relied on the judgment of the Supreme Court cited supra.

9. In view of what has been observed above, there hardly remains any doubt that the petition deserves to be allowed. However, it is made clear that but for this point, no other points, raised in the petition are argued before the Court and both the parties agree to the same.

10. In the circumstances, the petition is allowed. Order impugned so far as it relates to allowing of the amendment of the counter claim is quashed and set aside. Rule is made absolute in the aforesaid terms. No order as to costs.