

Before J. V. Gupta, J.

SUMAN KUMAR,—Petitioner.

versus

ST. THOMAS SCHOOL AND HOSTEL ETC.,—Respondents.

Civil Revision No. 3497 of 1985.

March 4, 1986.

Code of Civil Procedure (V of 1908)—Order 8, Rules 6-A to 6-G—Suit for permanent injunction—Defendant filing counter claim under rule 6-A—Plaintiff withdrawing the suit—Counter claim of the defendant—Whether could be proceeded with—Counter claim as provided under order 8 rule 6-A—Whether limited to cases involving money claims only.

Held, that rule 6-B of Order 8 of the Code of Civil Procedure, 1908, provides that if in any case, the defendant sets up a counter claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter claim may nevertheless be proceeded with. That being so, even if the plaintiff's suit is dismissed as withdrawn, the counter claim filed by the defendant could be proceeded with.

(Para 4).

Held, that it is difficult to accept that a counter claim could be made only in a suit for money. Instances are not rare, even before rule 6-A came into vogue, where counter claims were put forward in suits other than money suits. Now specific provisions have been made and rules 6-A to 6-G of order 8 deal with them. Thus, in view of the amendment in Rule 6 of Order 8, a counter claim could be made by the defendant in any kind of suit, i.e., whether a money suit or not.

(Para 3).

Jaswant Singh vs. Smt. Darshan Kaur A.I.R. 1983 Pat. 132.

(Dissented from)

Petition under Section 115 C.P.C. for revision of the order of the Court of Shri N. L. Pruthi, H.C.S., Additional Senior Sub-Judge, Rohtak, dated the 28th day of November, 1985, dismissing the contention made on behalf of defendant No 3, to convert the counter claim into a plaint.

I. S. Balhara, Advocate, for the Petitioner.

R. S. Mittal, Advocate with P. S. Bajwa, Advocate, for the Respondents.

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JUDGMENT

J. V. Gupta, J.—

(1) This petition is directed against the order of the trial court dated 28th November, 1985, whereby the trial court negated the contention of the defendant-petitioner to convert his counter claim into a plaint.

(2) The plaintiff-respondent filed the suit for permanent injunction against the defendant-petitioner and others for restraining them from dispossessing the plaintiff-school forcibly and from interfering in its peaceful possession. In that suit, the defendant-petitioner filed a counter claim as contemplated under Order 8, Rule 6-A, Code of Civil Procedure. Later on, the plaintiff was allowed to withdraw its suit with permission to file a fresh suit on the same cause of action. Thus, the suit was dismissed as having been withdrawn. At that stage, it was requested on behalf of defendant No. 3 to convert his counter claim into a plaint, and to decide it as such, as contemplated under Order 8, Rule 6-D, Code of Civil Procedure. The trial court repelled the contention of the defendant with the following observation:—

“So, when the suit filed by St. Thomas School through its Secretary has not been found to be maintainable, counter claim put forth by defendant No. 3 if converted into a plaint will fall on the same ground, namely, that it will not be maintainable against a registered/corporate body represented through Kishan Chand not properly authorised to defend the counter claim. Accordingly, therefore, finding no merit in the contention made on behalf of defendant No. 3 to convert the counter claim into a plaint, I hereby dismiss the same.”

Learned counsel for the defendant-petitioner submitted that even if the suit of the plaintiff had been dismissed as withdrawn, the counter claim could be proceeded with as provided under Order 8, Rule 6-D, Code of Civil Procedure. In support of this contention he referred to *Ved Parkash vs. Om Dutt* (1), *Munshi Ram vs. Radha*

Kishan (2), *Bhagirath Singh and others v. Ram Nath and others* (3) *Bhim Sain vs. Laxmi Narain* (4) and *Ranjit Singh vs. Kartara Ram* (5). On the other hand, learned counsel for the plaintiff-respondents submitted that no counter claim was maintainable except in the suits for recovery of money, and, therefore, the counter claim had been rightly dismissed. In support of this contention, he referred to *Jaswant Singh vs. Smt. Darshan Kaur* (6). It was next contended that in any case, the counter claim was liable to be dismissed in view of section 6 of the Registration of Societies Act. That being so, argued the learned counsel, the impugned order was valid, and could not be interfered with in revisional jurisdiction.

(3) I have heard the learned counsel for the parties and also gone through the case law cited at the Bar. The provisions of O. 8 R. 6, as amended in the year 1976 came up for consideration in this Court before a Division Bench in *Bhim Sain's* case (supra) where proceedings under the Haryana Urban (Control of Rent and Eviction) Act, 1973, were taken by the landlord to eject his tenant on the ground of non-payment of arrears of rent. However, the tenant deposited the arrears on the first date of hearing as claimed but at the same time he disputed the rate of rent. Since the arrears were paid by the tenant, the landlord got his petition dismissed. Aggrieved with it, the tenant came up in revision that his plea that the rate of rent was less ought to have been decided by the Rent Controller even if the landlord did not want to continue with his petition. The said contention of the tenant was accepted by this Court, and the Rent Controller was directed to frame the issue in this regard and determine the quantum of rent. While deciding that case, the provisions of O 8, R 6-A to 6-G, C.P.C. were considered, and it was observed :—

“The scope of such defence plea having the effect of a cross claim is to enable the Court to pronounce the final judgment in one and the same proceedings. These principles which have now come about as a part of the Civil Procedure Code carry out the broader principles of the public

(2) AIR 1975 Punjab and Haryana 112.

(3) 1977. NOC 219 (M.P.)

(4) 1982 C.L.J. 1.

(5) 1985 P.L.J. 521

(6) AIR 1983 Pat. 132.

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policy that there should be avoidance of multiplicity of proceedings and the parties should litigate once for all lest suffer bar of *res-judicata* as spelled out in the afore-quoted Single Bench decisions. Protest payment at the rate claimed by the landlord or insisted upon by the tenant is necessary to claim benefit of the proviso to avoid eviction."

The matter came up for consideration before me also in *Ranjit Singh's case* (supra) where it was held that clause (3) of R. 6-A provides that 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. Clause (4) further provides that the counter claim shall be treated as a plaint and governed by the rules applicable to plaints. Rule 6G provides that the rules relating to a Written Statement by a defendant shall apply to a Written Statement filed in answer to a counter claim. Thus, reading these provisions, it is quite evident that the plaintiff was entitled to file the Written Statement in answer to the counter claim. Of course, in *Jaswant Singh's case* (supra), the view taken is that the counter claim as provided under O. 8, R. 6-A is limited to cases involving money claims, yet a contrary view was taken by the Kerala High Court in *Raman Sukumaran vs. Velayudhan Madhavar* (7) I am in respectful agreement to the view taken by the Kerala High Court when it observed:—

"There is a clear distinction between set-off and counter claim. Before the introduction of R.6-A, the defendant had only a statutory defence of set off. I find it difficult to accept the contention that a counter claim can be made only in a suit for money. Instances are not rare even before Rule 6-A came into vogue where counter-claims were put forward in suits other than the money suits. Now specific provisions are made. Rules 6-A to 6-G deal with them. Rule 6-F deals with cases where Court finds a balance either in favour of the plaintiff of the defendant. The effect of Rules 6-A to 6-E and 6-G cannot be taken away by referring to Rule 6-F alone. Even Rule 6-F need not refer to money suits alone."

In any case, the Division Bench of this Court has made the said provisions applicable even to the proceedings before the Rent

Controller, and, thus, it is quite evident that now in view of the amendment in R.6 of O.8, a counter claim can be made by the defendant in any kind of suit, i.e. whether a money suit or not.

(4) Rule 6-B provides that if in any case, the defendant sets up a counter claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter claim may never the less be proceeded with. That being so, in the present case, even if the plaintiff's suit was dismissed as withdrawn, the counter claim filed by the defendants could be proceeded with. The view taken by the trial courts in this behalf is wholly wrong, illegal and misconceived. Rule 6G provides that the rules relating to Written Statement by a defendant shall apply to a Written Statement filed in answer to a counter claim. Thus, the plaintiff will be entitled to file its Written Statement in answer to the counter claim, in the present case, where all the objections including the bar u/s 6 of the Registration of Societies Act, etc., may be taken, if so advised. In this view of the matter, the petition succeeds, the impugned order is set aside, and the trial court is directed to proceed with the counter claim as provided U. O. 8 R. 6-A to 6-G of Code of Civil Procedure. No order as to costs.

(5) It is stated at the Bar, and has also been observed by the trial court, that a fresh suit on behalf of the present plaintiff St. Thomas School has already been filed through its Proprietor-cum-Principal. If that is so, the counter claim filed earlier by the defendant be decided along with that suit.

(6) The parties, through counsel, are directed to appear in the trial court on 20th March, 1986.

N. K. S.

Full Bench

Before : K. S. Tiwana, Surinder Singh and I. S. Tiwana, JJ.
HARBANS SINGH and others,—Petitioners.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 5095-M of 1984.

May 7, 1986.

Code of Criminal Procedure (II of 1974)—Sections 154, 190, 195(1) (b) (ii) and 340—Offence of forgery in respect of a document