

**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE
AND JMFC., AT CHAMARAJANAGARA**

Dated this the 3rd day of MARCH, 2021

Present: Sri. Ganapati Gurusidda Badami B.A. LL.B.(Spl)

ADDL. SENIOR CIVIL JUDGE & JMFC.,
CHAMARAJANAGARA.

O.S.No:78/2018

Plaintiff : Sri. V. Keertikumar

S/o Late Veerabhadrachar

V/s

Defendant : S. Basanna S/oShivappa

**ORDER ON I.A.No.8 U/S 151 OF CPC R/W.ORDER 8
RULE 9 OF CPC**

Plaintiff has filed this application seeking seeking permission to file rejoinder to the written statement filed by the defendant No.1.

2. In the accompanying affidavit of the plaintiff, he has stated that, the contents of plaint and documents

produced by him may be treated as part and parcel of accompanying affidavit. He has also stated that, defendant has filed his written statement by taking false contentions in the para No.9A of written statement stating that, he is debtor under Karnataka Debt Relief Act and after enactment of said Act, suit is not maintainable under law and he is not liable to pay alleged debt under suit document. He has also stated that, it is necessary to file rejoinder to the written statement with regard to allegations made in the written statement and if he is not permitted to file rejoinder to the written statement, he will be put to heavy and irreparable loss and on the contrary, no kind of loss or hardship will be caused to other side. Therefore, he prayed to allow the application.

3. Defendant has filed objections to the application contending that, application is not maintainable either in law or on facts and liable to be dismissed. It is also contended that, plaintiff has filed this application to drag on the proceedings and to harass the defendant and application is devoid of merits and liable to be dismissed. If application is dismissed, no kind of loss or hardship will be caused to the plaintiff and on the contrary, he will be put to heavy and irreparable loss. Therefore, it is prayed to dismiss the application with costs.

4. Heard the arguments of learned counsel for plaintiff and learned counsel for defendant on the application and perused the materials on record.

5. Materials on record disclose that, plaintiff has filed this suit against the defendant seeking the relief of recovery of money. As per the contention of plaintiff, defendant borrowed the hand loan of ₹.5,00,000/- on 06.12.2012 for his family necessities and executed the registered simple mortgage deed and agreed to pay the interest at the rate of 18% per annum, but he has failed to repay the said loan amount for which plaintiff filed the suit for recovery of loan amount along with interest with total amount of ₹.9,77,500/-.

6. Defendant filed written statement and denied the contents of the plaint. He has also denied loan transactions and execution of alleged simple mortgage deed in favour of plaintiff. He has taken contention that, he is member of Sri. Chamarajeshwara Chits Private Limited., Chamarajanagara in Cauveri -01 Ticket No.20 on monthly payment of ₹.10,000/- and after payment of several monthly installments, he got chit amount. He has also taken contention that, on the direction of Managing Director of the

Chit Fund, he executed the registered simple mortgage deed in favour of the plaintiff in respect of the suit property as security for chit amount.

7. It is also contended by him that, he clear the chit amount and requested the Managing Director to execute the discharge deed who went on prolonging in the same for one or other reasons.

8. The defendant filed I.A.No.7 under Order 6 Rule 17 of CPC seeking amendment of written statement and after contest, the said application came to be allowed and the defendant filed amended written statement with contention that, he is debtor under Karnataka Debt Relief Act – 2019 and suit is not maintainable.

9. Now, the plaintiff has filed this application seeking permission to file rejoinder to the written statement on the ground that, the defendant has taken false contention in the written statement and it is necessary to file rejoinder to the counter claim.

10. The learned counsel for plaintiff has submitted that, the suit has been filed by the plaintiff seeking the relief of recovery of money and during the pendency of the suit

and after filing the written statement, Government has announced scheme to waive the loan of small farmers and defendant got amended written statement and inserted para No.8(a) by contending that, he is debtor under Karnataka Debt Relief Act. It is also contended by him that, when written statement was amended, the plaintiff is having right to file rejoinder and amended written statement filed on 13.01.2020 and rejoinder filed on 03.02.2020 which is within 30 days. It is also contended that, in the decision relied by learned counsel for defendant, there is single word about rejoinder and plaintiff has filed his rejoinder within 28 days.

11. Learned counsel for defendant has submitted that, Order 8 Rule 9 of CPC is applicable for additional written statement and not rejoinder by the plaintiff. It is also contended that, after filing the written statement, there is no right for the plaintiff to file rejoinder to the suit and plaintiff has lost his right. There is no difference in rejoinder and replication and defendant has not filed counter claim or set off and plaintiff cannot file replication or rejoinder to the written statement. He has contended that, the decision relied by learned counsel for plaintiff is judgment in personam and it is not judgment in rem.

12. The learned counsel for plaintiff has relied upon decision of Hon'ble High Court in WP No.82389 and 82343/12 in support of his contention. He has also relied upon decision of **Hon'ble Rajasthan High Court, Gurjant Singh V/s Krishan Chander and others, AIR 2001 Raj. 211.** It is just and proper to refer the procedural aspect in respect of pleadings. Counter claim means “a claim presented by a defendant in opposition to or deduction from the claim of the plaintiff. If established, it will defeat or diminish the claim of the plaintiff. The counter claim will be as good as plaint. **Order 8 Rule 6 of CPC** speaks about set off which is as under:

(1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first haring of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off [OR,P,MY].

Effect of set-off.- (2) The written statement

shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off; but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

13. As per Order 8 Rule 1 of CPC, the defendant shall within 30 days from the date of service of summon on him shall present written statement of his defence. Order 6 Rule 1 of CPC describes the word “pleading” which means plaint or written statement. The counter claim shall be treated as a plaint and the rules applicable to the plaint are also applicable to the counter claim. The counter claims will have the same effect as cross suit and the Court shall pronounce the final judgment both on suit and counter claim. Order 8 Rule 6(A) (3) gives liberty to the plaintiff to file written statement in answer to the counter claim of the defendant within the period fixed by the Court. In case, the defendant sets up counter claim and suit of the plaintiff is stayed or discontinued or dismissed the counter claim may

nevertheless be proceeded with. If plaintiff makes default in filing reply to the counter claim made by the defendant, the Court may pronounce judgment against plaintiff in relation to the counter claim made against him or make such order in relation to the counter claim as it thinks fit. Rule 6(G) of Order 8 of CPC speaks that, the rules relating to the written statement by the defendant shall apply to the written statement filed in answer to the counter claim.

14. The counter claim has been explained in Order 8 Rule 6(A) of CPC which reads as follows;

6A. 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 to 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.

15. It is clear from the said provision that the counter claim is nothing but cross suit of the defendant and the counter claim will have cause of action, relief which will be sought against plaintiff and cause of action for the counter claim may arise against the plaintiff either before or after filing the suit. However the counter claim shall not exceed pecuniary jurisdiction of Court and the court is bound to pronounce final judgment on the original claim of plaintiff and counter claim of defendant. The counter claim will be treated as plaint and principles relating to plaint are applicable to the counter claim. In this case the defendant has filed his written statement contending that he is member of Sri Chamarajashwara Chits (K) Pvt., Ltd.,

Chamarajanagara in Kavery -01 ticket No.20 on monthly payment of Rs. 10,000/- and after payment of installments on several months, the defendant and obtained taken chit amount. The managing Director of said chit directed the defendant to execute the simple mortgage deed in respect of suit property for security purpose chit amount and assured that the said simple mortgage deed will be released after clearance of chit. The defendant has also taken contention that he is a debtor under Karnataka Debt Relief Act-2019 and suit is not maintainable. On careful reading of the written statement filed by the defendant, there is no prayer of counter claim and he has not sought any relief in the written statement in the form of counter claim and he has not shown any cause of action in the written statement to show that he has any counter relief against the plaintiff. Even he has not paid any Court fee in the written statement. In the written statement is not a counter claim of defendant and no relief has been sought against the plaintiff, the question of filing rejoinder does not arise at all. When there is no counter claim of of defendant, the question of rejoinder or written statement to the counter claim does not arise at all. Hence the principles laid down in the decision relied by the learned counsel for plaintiff in WP No.82329 and 82343 of 2012, AIR 2001 Rajasthan are not applicable to the facts of the case. Hence I hold that

application filed by the plaintiff seeking permission filed rejoinder is not maintainable and application liable to be dismissed. So I proceed to pass following;

ORDER

I.A.No.8 under Section 151 of CPC R/W
Order 8 Rule 9 of CPC is hereby dismissed as
not maintainable.

[Ganapati Gurusidda Badami]
Addl. Senior Civil Judge and JMFC.,
Chamarajanagara.