

ORDER BELOW EXH. 17

This is the application filed by defendant for permitting defendant to file counter-claim in this suit.

2. Facts which gave rise to the application are as under;

It is contended that defendant is filing counter-claim in this suit under Order VIII Rule 6-A, 6-B, 6-F, Rule 7, 8 and 9 of C.P.C. subject to the leave of the court. As mentioned in the application, the cause of action to file counter-claim arisen before present suit and also before filing written statement against the plaintiff and said cause of action is in continuance as such claim was part of defendant's say filed in response to Exh. 5, Exh. 1 and also before Hon'ble High Court in appeal from order of Exh. 5. It is contended that counter-claim in specific under Order VIII Rule 6-A has not been filed along with written statement on 10.09.2020 as defendant was holding general and particular lien on the bill of lading of plaintiff's consignment until 04.01.2021.

3. It is contended that defendant released the bill of lading to plaintiff only on 04.01.2021 based on the judgment of the Hon'ble High Court Single Bench of which the order was pronounced on 22.12.2020. It is contended that with the release of bill of lading on 04.01.2021 and on the basis of judgment of Hon'ble Bombay High Court Single Bench order dated 07.01.2021 defendant has no option than to move present counter-claim before this court to safeguard its recovery from plaintiff. According to defendant the counter-claim is well within limitation period and it is within pecuniary jurisdiction of this court. Further, filing of said counter-claim is well before framing of the issues and recording of evidence. It is contended that

defendant is intending to rely upon the latest judgment of Hon'ble Apex Court passed in the case of '**Ashok Kumar Kalra Vs. Wing CDR Surendra Agnihotri & ors. In SLP(C) Case No. 23599 of 2018**' in which issues addressing counter-claim question after written statement under Order VIII Rule 6-A has been addressed in detail. It is contended that defendant paid necessary court fees of Rs. 90,030/- on the counter-claim which is amounting to Rs. 63,68,569/- and according defendant said amount is recoverable from plaintiff. With the help of those contentions defendant has prayed to allow the application and to grant him the leave to file counter-claim in present suit.

4. Plaintiff has resisted the application by filing say on the application itself contending that, purported claim of defendant pertains to transaction prior to filing of present suit, in such case defendant ought to have filed counter-claim along with defence/written statement. Hence, according to plaintiff no case is made out by defendant to file the counter-claim at belated stage. Further, according to plaintiff in the background of the facts of the case it is just and necessary that defendant shall file independent suit against plaintiff instead of counter-claim. With the help of those contentions plaintiff has prayed to reject the application.

5. Defendant's advocate has argued that even though plaintiff has previously filed written statement without counter-claim, now defendant is entitled to file the counter-claim in view of the observations of Hon'ble Apex Court in the reportable case between '**Ashok Kumar Kalra Vs. Wing CDR Surendra Agnihotri & ors. In SLP(C) Case No. 23599 of 2018**'. Defendant's advocate has cited

said reportable case in which it is observed that;

'23.The above discussion lends support to the conclusion that even though Rule 6A permits the filing of a counter-claim after the written statement, the Court has the discretion to refuse such filing if it is done at a highly belated stage. However, in my considered opinion, to ensure speedy disposal of suits, propriety requires that such discretion should only be exercised till the framing of issues for trial. Allowing counter-claims beyond this stage would not only prolong the trial, but also prejudice the rights that may get vested with the plaintiff over the course of time.

At the same time, in exceptional circumstances, to prevent multiplicity of proceedings and a situation of effective re-trial, the Court may entertain a counter-claim even after the framing of issues, so long as the Court has not started recording the evidence. This is because there is no significant development in the legal proceedings during the intervening period between framing of issues and commencement of recording of evidence. If a counter-claim is brought during such period, a new issue can still be framed by the court, if needed, and evidence can be recorded accordingly, without seriously prejudicing the rights of either party to the suit.

At this juncture, I would like to address the observation in **Rohit Singh** (*supra*) that a counter-claim, if filed after the framing of the issues and closing of the evidence, would be illegal and without jurisdiction. In my opinion, this is not a correct statement of law, as the filing of counter-claims after the commencement of recording of evidence is not illegal *per se*. However, I hasten to add that permitting such a counter-claim would be improper, as the Court's discretion has to be exercised wisely and pragmatically.

24.There are several considerations that must be borne in mind while allowing the filing of a belated counter-claim. First, the Court must consider that no injustice or irreparable loss is being caused to the defendant due to a refusal to entertain the counter-claim, or to the plaintiff by allowing the same. Of course, as the defendant would have the option to pursue his cause of action in a separate suit, the question of prejudice to the defendant would

ordinarily not arise. Second, the interest of justice must be given utmost importance and procedure should not outweigh substantive justice. Third, the specific objectives of reducing multiplicity of litigation and ensuring speedy trials underlying the provisions for counter-claims, must be accorded due consideration.

25. Having considered the previous judgments of this Court on counter-claims, the language employed in the rules related thereto, as well as the intention of the Legislature, I conclude that it is not mandatory for a counter-claim to be filed along with the written statement. The Court, in its discretion, may allow a counter-claim to be filed after the filing of the written statement, in view of the considerations mentioned in the preceding paragraph. However, propriety requires that such discretion should ordinarily be exercised to allow the filing of counter-claim till the framing of issues for trial. To this extent, I concur with the conclusion reached by my learned Brothers. However, for the reasons stated above, I am of the view that in exceptional circumstances, a counter-claim may be permitted to be filed after a written statement till the stage of commencement of recording of the evidence on behalf of the plaintiff.'

6. Plaintiff's advocate argued that as defendant has not filed the counter-claim along with written statement, hence, defendant cannot be permitted to file it on record.

7. In present suit yet the issues are to be framed. In such circumstances in the light of observation of Hon'ble Apex Court, it becomes clear that defendant can be permitted to file the counter-claim after filing of his written statement in the suit. As the issues are yet to be framed in the matter, I am of the opinion that no prejudice will be caused to plaintiff, if defendant will be permitted to file the counter-claim before framing of the issues because plaintiff will have the opportunity to file his defence to resist the contentions

raised in the counter-claim and thereafter issues can be framed in the suit. Considering the pleadings, from written statement of defendant, pleadings from counter-claim of defendant plaintiff can resist the counter-claim and thereafter, issues can be framed and the trial can proceed according to law. Further, if the filing of counter-claim in this suit will be allowed, multiplicity of litigations will be avoided and plaintiff's claim from the plaint as well as defendant's claim from counter-claim can be entertained together and after adducing the evidence by parties, the court can decide that whether plaintiff's claim should be allowed or whether defendant's counter-claim should be allowed. For all above reasons, I find that application for granting leave to defendant to file counter-claim after filing of the written statement can be allowed. Hence, I proceed to pass following order.

O R D E R

Application Exh. 17 is allowed, leave is granted to defendant to file his counter-claim in the matter after filing his written statement on record.

Dt. : 31.07.2021

(K. P. Nandedkar)
District Judge-2, Pune.