

IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL
MAGISTRATE, SHENCOTTAH

**`PRESENT : THIRU.M.SUNIL RAJA, B.A.M.L.,
DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
SHENCOTTAH**

Dated this the 18th day of December 2024

I.A.No.01 of 2024

in

O.S.No.70 of 2016

1. Ganapathy
2. Gowtham

... Petitioners/Plaintiffs

..Vs..

1. Sendu @ Padaiveetal
2. Mariappan

... Respondents/Defendants

This petition was came up before me for final hearing in the presence of Tr.R.Jegadeesan Learned counsel for the Petitioners/Plaintiffs and Tr.S.Krishnamoorthy Learned counsel for the Respondents/Defendants on hearing both sides, upon perusing the material records, documents and having stood over for consideration till date this court delivers the following....

ORDER

1. This petition is filed under Order VI rule 16, Order VII rule 11 and Section 151 of CPC to strike out the pleadings in the written statement and reject the counterclaim of the respondent.
2. **Summary of the Petition:**
 - 2.1. The copy of the written statement filed by the defendants was served to the plaintiffs on 13.04.2017. However, there is a significant discrepancy between the copy served to the plaintiffs and the written statement filed in court. The written statement filed in court includes counterclaims, whereas

the copy served to the plaintiffs does not. Additionally, the written statements do not separately specify the cause of action and court fees as required by the Civil Procedure Code. Therefore, the petitioner argues that the defendants have committed fraud and misused court proceedings, and requests that paragraphs 21A and 29 of the written statement be struck out and the counterclaim be rejected under Order 7 Rule 11 of the Civil Procedure Code.

3. Summary of the Counter:

- 3.1. The written statement filed by the defendants on 13.04.2017 was returned for various corrections and was subsequently accepted by the court. The accepted written statement included the counterclaims. The court did not instruct the defendants to serve the corrected copy to the plaintiffs, resulting in the plaintiffs not receiving the updated copy. This omission is excusable.
- 3.2. Furthermore, paragraphs 8 and 9 of the written statement clearly explain the details of the counterclaims. Any error in citing the legal provisions in the petition or counterclaim does not cause any prejudice. Therefore, the reasons provided by the petitioner are not acceptable, and the petition should be dismissed.

4. Issue to be Determined:

- (i) The main issue to be determined in this petition is whether the counterclaim filed by the defendants should be rejected as requested by the petitioner, and whether the defendants have committed fraud or misused court proceedings.
- 4.1. Both sides were heard, and the case documents were reviewed. The petitioner's argument is that there is a discrepancy between the written statement filed by the defendants in court and the copy of the written statement served to the plaintiff's counsel. Specifically, the written statement served to the plaintiff's counsel did not include any counterclaims, whereas the written statement filed in court included two additional paragraphs raising counterclaims, and the necessary court fees

were paid. Therefore, it is argued that the defendants have committed fraud in court.

- 4.2. Upon examining this, it is found that the defendants initially filed the written statement on 13.04.2017. The written statement was returned on 18.04.2024 for deficiencies. It was refiled on 02.05.2017 after rectifying the deficiencies. It was returned again on 06.07.2017 for further deficiencies. This process continued, with the written statement being returned multiple times until 07.08.2017.
- 4.3. Each time the written statement was returned, the deficiencies pointed out were rectified, and the written statement was refiled with the necessary court fees for the counterclaims included. However, the copy of the written statement served to the plaintiff's counsel was the one dated 13.04.2017, and no updated copy with the corrections was provided to the plaintiff's side.
- 4.4. The court records show that the final written statement with counterclaim filed by the defendants on 06.11.2017 was accepted into the case file. After the written statement with counterclaim was accepted, the case was adjourned to 20.12.2017 for framing issues. From 20.12.2017 to 10.10.2023, the case was pending for framing issues, and on 10.10.2023, the issues were framed, including the counterclaims raised by the defendants.
- 4.5. According to the Civil Procedure Code, if a counterclaim is filed by the defendants, the plaintiff should be given sufficient time to file a reply. However, the court records show that after the counterclaim was filed by the defendants in 2017, no time was given to the plaintiff to file a reply to the counterclaims. The case was directly adjourned for framing issues without providing the plaintiff an opportunity to file a reply. Therefore, the plaintiff has not filed a proper reply.
- 4.6. The plaintiff became aware of the counterclaims raised by the defendants only during the cross-examination stage after filing the proof affidavit and marking documents. The plaintiff then filed this petition.

- 4.7. It is a well-established legal principle that parties should not be prejudiced by procedural errors in court. Accordingly, in this case, after the written statement with counterclaim was filed by the defendants, the plaintiff should have been given time to file a reply. The lack of such an opportunity led to the filing of this petition by the petitioner. The procedural error in court resulted in the plaintiff not filing a timely reply.
- 4.8. Since this deficiency has now been identified, to rectify it, the court finds that the plaintiff should be allowed to file a reply to the counterclaim. The plaintiff has only filed a proof affidavit, and no cross-examination has taken place. Therefore, allowing the plaintiff to file a reply to the counterclaim and then proceeding with the trial will not prejudice any party. Additionally, there is no evidence of fraud or misuse of court proceedings by the defendants. Therefore, the court concludes that there is no need to reject the details in the counterclaim filed by the defendants as requested by the petitioner.
- 4.9. Another argument made by the petitioner is that the counterclaim filed by the defendants lacks the necessary elements of a cause of action and should be dismissed under Order 7 Rule 11 of the Civil Procedure Code. Upon examining this, a cause of action is a bundle of facts. Even if not explicitly stated, if the facts in the written statement indicate a cause of action, it is sufficient. The counterclaim filed by the defendants clearly contains the necessary elements of a cause of action. Additionally, the details of the court fees are also specified. Therefore, considering the counterclaim in its entirety, it is clear that it contains the necessary elements of a cause of action and court fee details. Hence, the court concludes that the counterclaim filed by the defendants should not be rejected as argued by the petitioner. Therefore, the court concludes that this petition filed by the petitioner is liable to be dismissed.
- 4.10. However, due to the procedural error in court, the plaintiff should be given an opportunity to file a reply to the counterclaim. Therefore, the court

concludes that the plaintiff should be given sufficient time and opportunity to file a reply to the counterclaim.

Finally, this petition is dismissed without costs.

This order was transcribed via speech-to-text on my computer, edited and corrected by me, and pronounced in open court today, the 18th of December 2024.

District Munsif Cum
Judicial Magistrate, Shencottah

1. Petitioners/Plaintiffs side witness and Documents:NIL

2. Respondents/Defendants side witness and Documents:NIL

District Munsif Cum
Judicial Magistrate, Shencottah