

T.S. 215/20 CNR – WBCC0104570-2020

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 28

17.5.24

Today is fixed for hearing the application of the plaintiffs u/o 8 Rule 6C read with section 151 CPC dtd 5.10.23.

Both the sides file haziras. Heard the Ld. Advocates for both the sides at length.

Perused the application, whereby the plaintiffs have prayed for passing necessary order to exclude the counter claim of the defendant mainly on the ground that the same is hopelessly barred by law of limitation.

The defendant has resisted and contested the said application by filing a WO denying all the material allegations contained therein and has prayed for rejection of the same mainly on the ground that the said application has been preferred only to get rid of the delay in filing WS against the counter claim which was filed as long ago as on 19.10.20.

It appears from the record that the instant suit is one for declaration, injunction and other consequential reliefs preferred by the plaintiffs claiming their alleged tenancy right in respect of the suit premises since the time when their predecessor in interest namely Phanindranath Mukhopadhyay since deceased was inducted therein by the predecessor in interest of the defendant and even after the demise of the said Phanindranath Mukhopadhyay rent was duly tendered by the plaintiffs to the defendant who however refused to accept the same on flimsy pretext.

The defendant is resisting and contesting the suit by filing WS with counter claim denying all the material allegations contained in the plaint as well as seeking relief in the shape of declaration that the plaintiffs are trespassers in respect of the suit premises as well as for recovery of possession of the suit premises in view of the provision of section 2(g) of the WBPT Act 1997. It also appears from the record that the said WS along with counter claim of the defendant was filed on 19.10.20 which has been accepted but the counter claim is proceeding exparte due to non-filing of WS by the plaintiffs against the same.

The Ld. Advocate for the plaintiffs draws the attention of this court to the relevant portion of the WS and counter claim wherefrom it can be gathered that the said Phanindranath Mukhopadhyay died approximately at any point of time during the years 1955 to 1960 AD while the WBPT Act 1997 having been promulgated on 10.7.01, it cannot be said that the cause of action of the counter claim arose on 9.2.20 and as such the counter claim is hopelessly barred by law of limitation.

On the other hand, the Ld. Advocate for the defendant has argued that the present application is nothing but a ploy on the part of the plaintiffs to get rid of the counter claim filed on behalf of the defendant as despite lapse of more than three years no WS has as yet been filed by the plaintiffs for which the same has been directed to proceed exparte against them.

From the averments made in the WS and counter claim of the defendant it appears that the cause of action of the counter claim has been shown to have arisen on 9.2.20 i.e. before the defendant has delivered his defence as well as before the time limited for delivering his defence has expired. Though the counter claim contains that the cause of action has arisen on 9.2.20 but considering the nature of the counter claim and the reliefs claimed it is evident that the same is for eviction of the plaintiffs on the ground that they are trespassers and / or unlawful occupiers of the suit premises in view of the definition of the word 'tenant' as provided in section 2(g) of the WBPT Act 1997. In such type of cases cause of action is a recurring one and merely by mentioning a date to be the accrual of cause of action cannot in any way render the counter claim to be barred by law of limitation and more so when the plea of limitation is not purely a question of law but the same being a mixed question of law and fact. Even if any order is passed in favour of the plaintiffs for exclusion of counter claim, yet such order can never preclude the defendant from bringing a fresh suit for eviction of the plaintiffs in terms of the relevant provisions of the WBPT Act 1997. On the other hand the same will unnecessarily give rise to multiplicity of proceedings involving loss of money, time and man power without any justifiable cause when the reliefs claimed in such suit can easily be determined in the present suit. In that perspective it is also clear that no real prejudice will be caused to the plaintiffs if the counter claim of the defendant is not excluded as prayed for and more so when the said counter claim is proceeding exparte against the plaintiffs.

Totality of the aforesaid findings and deliberations impels this court to arrive at the definite conclusion that the prayer of the plaintiffs made in the application under consideration is practically devoid of any merit and as such the same does not call for any favourable response.

Hence, it is

Ordered

that the application of the plaintiffs dtd 5.10.23 u/o 8 Rule 6C read with section 151 CPC is hereby rejected on contest.

Fix 18.06.24 for framing of issues.

D/C by me

Judge

Judge 2nd Bench