

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA**

CIVIL REVISION PETITION No.2115 of 2019

Between:

Rajakamal Electronics Private Limited and others.

.. Petitioners

AND

M/s.Sony India Pvt.Ltd.,

.. Respondents

Date of Judgment Pronounced: 27.10.2022

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | YES/NO |
| 2. Whether the copies of judgment may be marked to Law Reports/Journals? | YES/NO |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | YES/NO |

A.SANTHOSH REDDY, J

*** HONOURABLE SRI JUSTICE A.SANTHOSH REDDY**

+ CIVIL REVISION PETITION No.2115 of 2019

% 27.10.2022

Rajakamal Electronics Private Limited and others.

..PETITIONER

VS.

\$ M/s.Sony India Pvt.Ltd.,

..RESPONDENT.

! Counsel For The Petitioner: M/s.Prem Kumar Pothina

^ Counsel For Respondents: Vasam Anandkumar

< Gist :

> Head Note :

? CITATIONS : -

- 1. (2013) 9 Supreme Court Cases 404**
- 2. 2016 SCC online Del 6555**
- 3. (2020) 2 Supreme Court Cases 394**
- 4. AIR 1987 1395**

HON'BLE SRI JUSTICE A.SANTHOSH REDDY**C.R.P.No.2115 of 2019****ORDER:**

This Civil Revision Petition is filed to set aside the order, dated 08.07.2019, passed in I.A.No.260 of 2019 in O.S.No.554 of 2014 by the V Senior Civil Judge, City Civil Court, Hyderabad.

2. Heard the submissions of Sri Premkumar Pothina, learned counsel for the petitioners and Sri Vasam Anand Kumar, learned counsel for the respondent. I have perused the material record.
3. The petitioners herein are the defendants ("defendants" for short) and the respondent herein is the plaintiff ("plaintiff" for short), who filed suit in O.S.No.554 of 2014.
4. The facts, which are necessarily be stated as prelude to the order, in brief, are as follows:

The plaintiff filed suit against the defendants for recovery of Rs.6,96,379/- with future interest thereon and costs based on the goods supplied by it to the defendants. The defendants filed written statement and the issues were settled and the case was

coming-up for cross-examination of PW.1. At that stage, the defendants filed counter-claim under Order VIII Rule 6-A read with Section 151 of the Code of Civil Procedure (C.P.C.) seeking the reliefs as under:

“The counter claimant therefore prays that this Hon’ble Court may be pleased to pass a Judgment and Decree in favour of Counter claimants against the defendant/plaintiffs:

- (a) To set-off a sum of Rs.5,00,000/- (Rupees Five Lakhs only) along with interest accrued herein from the claim of the plaintiff.
- (b) To declare the Counter claim/damages of Rs.10,00,000/- (Rupees Ten Lakhs only) filed by the counter claimants against the plaintiff for Rs.10,00,000/-.
- (c) To award costs of the counter claim in the present suit;
- (d) And pass such other relief or reliefs as this Hon’ble Court may deem fit and proper in the circumstances of the case”.

5. In the affidavit filed in support of the application, it is averred that defendant No.1-company was the first multi-brand electronic store and it ran successfully for some time and subsequently, its business was deteriorated and decided to withdraw from the business and decided to liquidating in stocks in hand, capital assets and clearing their outstanding debts. The defendants in their written statement reserved their right to file

counter-claim. Hence, they sought permission to file the proposed counter claim.

6. The plaintiff filed counter affidavit reiterating its case pleaded in the plaint and has taken a specific plea that the amount being claimed by way of counter-claim relates to the transactions that have taken place prior to 2012. Therefore, counter claim is barred by time. Hence, prayed to dismiss the application.

7. The trial Court, after hearing both sides, dismissed the application filed by the defendants seeking permission to file the counter-claim by observing that the counter claim is barred by limitation.

8. Aggrieved by the said orders, the present civil revision petition is preferred by the defendants stating that the impugned order passed by the trial Court is contrary to law, weight of evidence and probabilities of the case. The trial Court erred in dismissing the application and it has failed to understand that the cause to the petitioners to file counter claim had arisen only after the respondent filed O.S.No.554 of 2014. The trial Court erroneously concluded that the cause of action arose during the

period 2006-2011 and it has dismissed the application on the ground of limitation, which is contrary to law.

9. The plaintiff has filed counter affidavit reiterating their case pleaded in the plaint. It is submitted that the impugned order does not suffer from any illegality and that the trial Court has rightly refused to file the counter-claim that the same is barred by time. It is further submitted that the impugned order needs no interference.

10. Learned counsel for the defendants vehemently submits that the cause to file counter claim has been accrued during the cross-examination of PW.1 between 26.08.2011 and 26.02.2019, when the plaintiff filed additional documents in support of his claim. He further submits that the trial Court has erroneously computed the limitation from 2006 to 2011 at which time, cause to file claim of defence never arose. Therefore, he prayed to allow the revision. He relied on the following judgments:

1. **Chebrol Sriramulu v. Vakalapudi Satyanarayana**¹
2. **Vishal Hira Merchant Pvt. Ltd. v. HDFC Bank**²
3. **Ashok Kumar Kalra v. Wing CDR. Surendra Agnihotri**³

¹ (2013) 9 Supreme Court Cases 404

² 2016 SCC Online Del 6555

³ (2020) 2 Supreme Court Cases 394

11. *Per contra*, apart from reiterating the pleaded case, learned counsel for the plaintiff, while supporting the orders of the trial Court, contended that no counter-claim can be permitted to be filed after framing of the issues and only in exceptional cases, the counter-claim can be permitted to be taken on record, if recording of evidence is not yet commenced. The trial Court, after taking into consideration of the fact that the trial has been commenced and the plaintiff adduced evidence, has rightly refused to permit the defendants to file counter claim. As such, the impugned order does not suffer from any infirmity and he prayed to dismiss the revision.

12. Thus, after hearing the submissions of learned counsel for both the parties and on perusal of the material record, the point that arises for consideration is; whether the impugned order is sustainable in law?

13. In the considered view of this Court, the question involved in this revision is no more *resintegra*, in view of the settled legal position.

14. Before going into to the merits of the case, it would be profitable to refer the provisions of Order VIII Rule 6(A) of C.P.C., which reads as under:-

6-A.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 the 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. A right to file counter-claim is an additional right. The cause of action must accrue either before or after filing the suit, but before the defendant has raised his defence. However, the

Apex Court in **Mahendra Kumar v. State of Madhya Pradesh**⁴

held as under:

“ The next point that remains to be considered is whether Rule 6A(1) of Order VIII of the Code of Civil Procedure bars the filing of a counter-claim after the filing of a written statement. This point need not detain us long, for Rule 6A(1) does not, on the face of it, bar the filing of a counter-claim by the defendant after he had filed the written statement. What is laid down under Rule 6A(1) is that a counter-claim can be filed, provided the cause of action had accrued to the defendant before the defendant had 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. The High Court, in our opinion, has misread and misunderstood the provision of Rule 6A(1) in holding that as the appellants had filed the counter-claim after the filing, of the written statement, the counter-claim was not maintainable. The finding of the High Court does not get any support from Rule 6A(1) of the Code of Civil Procedure. As the cause of action for the counter-claim had arisen before the filing of the written statement, the counter-claim was, therefore, quite maintainable. Under Article 113 of the Limitation Act, 1963, the period of limitation of three years from the date the right to sue accrues, has been provided for any suit for which no period of limitation is provided elsewhere in the Schedule. It is not disputed that a counter-claim, which is treated as a suit under section 3(2)(b) of the Limitation Act has been filed by the appellants within three years from the date of accrual to them of the right to sue. The learned District Judge and the High Court were wrong in dismissing the counter-claim.”

16. In **Ashok Kumar Kalra**'s case (3 supra), the Apex Court at para No.12 elucidated the conditions for filing a counter claim under Order 8 Rule 6-A of C.P.C, which are as under:

⁴ AIR 1987 1395

(i) Counter claim can be for claim of damages or otherwise, counter-claim should relate to the cause of action, which may accrue before or even after filing the suit.

(ii) If, the cause of action in the counter-claim relates to one accrued after filing of suit, it should be one accruing before filing of the written statement or the time given for the same.

The Apex Court also observed that scheme of Order VIII C.P.C unequivocally points out the legislative intent to advance the cause of justice by placing embargo on the belated filing of written statement, set-off and counter-claim. Now, it would be beneficial to extract para 21 of the said judgment, which reads as under:-

"We sum up our findings, that Order VIII Rule 6A of the CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counter-claim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- i. Period of delay.
- ii. Prescribed limitation period for the cause of action pleaded.
- iii. Reason for the delay.
- iv. Defendant's assertion of his right.
- v. Similarity of cause of action between the main suit and the counter-claim.
- vi. Cost of fresh litigation.
- vii. Injustice and abuse of process.
- viii. Prejudice to the opposite party.
- ix. And facts and circumstances of each case.
- x. In any case, not after framing of the issues."

17. In view of the above exposition of law, it is clear that the outer limit for filing counter claim is till framing of the issues. Admittedly in the present case, the counter-claim is filed after the plaintiff filed its evidence and Pw.1 was cross-examined. Apart from the above, the counter-claim was preferred basing on the transactions related to the years 2006-2007 to 2010-2011, on which the amount sought to be claimed from the plaintiff. Though, it is the contention of defendants that the cause of action for counter claim has been accruing from time to time and lastly on 24.04.2019 when PW.1, the witness of the plaintiff, was cross-examined, and, therefore, the proposed counter claim is well within the period of limitation. But, as stated that in the proposed counter-claim the transactions based on which the amount sought to be claimed from the plaintiff relate to the years from 2006-2007, the defendants were well aware that they are entitled for the said amounts claimed by the respective years itself. The denial by Pw.1 about the liability or refusal by the plaintiff to pay the alleged amounts does not give any fresh cause of action, as the cause of action already began to run from the dates, when the plaintiff

allegedly became due of the said amounts. It is also the case of the defendants that they have reserved their right to file counter claim under Rule 6-A of Order VIII of C.P.C. as required under Rule 6-B of Order VIII of C.P.C., but that itself does not save the limitation. As per the ratio laid down by Apex Court in **Ashok Kumar Kalra**'s case, Order VIII Rule 6-A of C.P.C. does not put an embargo on filing the counter claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. But this does not give absolute right to the defendant to file the counter claim with substantive delay, even if the limitation period prescribed has not elapsed. As, the counter claim is treated to be plaint, the provisions of the Limitation Act, 1963 (for short "the Act") would apply, as the time barred suits cannot be entertained under the guise of the counter claim just because of the fact that the cause of action arose as per the parameters of Order 8 Rule 6-A of C.P.C. The purpose of Order VIII Rule 6-A of C.P.C. is to avoid multiplicity of the proceedings by driving the parties to file separate suits and see that the dispute between the parties is decided finally. Under Article 113 of the

Limitation Act, 1963, the period of limitation is three years from the date of the right to sue accrues, when the period of limitation is not provided elsewhere in the schedule. The counter claim has to be filed within three years from the date of accrual of right to sue. Since the defendants intends to claim amounts from the plaintiff relating to the transactions, which are relating to the period from 2006 to 2011 and the proposed counter claim is filed on 24.04.2019, which is certainly barred by limitation.

18. The law that has now been settled in **Ashok Kumar Kalra's** case (3 supra) that only 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. Therefore, in the instant case, the defendants have filed counter claim intending to claim the amounts allegedly due by the plaintiff during the period from 2006 to 2011 and they were well aware about their entitlement of the amounts claimed by them in respective years itself. In the said circumstances, as stated supra, as per Article 113 of the

Act, 1963, the proposed counter claim is clearly barred by limitation.

19. For the foregoing reasons, I am of the firm view that there is no illegality or irregularity in the order passed by the trial Court refusing to permit the defendants to file counter claim warranting interference by this Court under Article 227 of the Constitution of India.

20. In the result, the Civil Revision Petition is dismissed. However, the defendants are left to avail remedies, if the same are available in law. Miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

A.SANTHOSH REDDY, J

27.10.2022

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