

HONOURABLE SRI T.VINOD KUMAR
CIVIL REVISION PETITION No.5 of 2023

Between:

#Smt.Puchalapalli Vijitha and another.

..... Petitioner

Versus

\$ PittaHari Babu.

..... Respondent

Date of Judgment pronounced on :08-02-2023

HONOURABLE SRI JUSTICE T.VINOD KUMAR

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 Reporters/Journals: : Yes
3. Whether His Lordships wishes to see the fair copy
Of the Judgment? : Yes/No

JUSTICE T.VINOD KUMAR

HONOURABLE SRI T.VINOD KUMAR

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< GIST:

> HEAD NOTE:

!Counsel for the Petitioner : Sri Ashutosh B. Joshi

^Counsel for the respondent : None appeared

? Cases referred

¹. 2017 (3) ALD 68 : 2016 (0) SCJ Online (AP) 328

². (1996) 4 SCC 699

THE HON'BLE SRI JUSTICE T. VINOD KUMAR**Civil Revision Petition No.5 of 2023****ORDER:**

1. This Civil Revision Petition under Article 227 of Constitution of India is preferred against the order passed by the II Additional Junior Civil Judge-cum-II Additional Metropolitan Magistrate at Malkajgiri in I.A.No.893 of 2021 in O.S.No.557 of 2020, dt.25.11.2022.

2. Heard Sri Ashutosh B. Joshi, learned counsel for Revision Petitioners, and perused the record. Though the name of Sri B.Srinivas is shown in the cause list as counsel for the Respondent, he did not appear and a request for adjournment was made on his behalf after the learned counsel for the Petitioners had concluded his submissions. The said request for adjournment was declined by the Court, as notices to Respondent in this civil revision petition were ordered on 06.01.2023 directing the matter to be listed on 27.01.2023. On 27.01.2023 when the matter was taken, as there was no representation on behalf of the Respondent, even though the name of learned counsel was shown in the cause list on the

said date and the matter was directed to be listed today i.e., 03.02.2023. Thus, this court proceeded to dispose of the matter.

3. The Petitioners herein are the Defendants in the suit instituted by the Respondent herein as Plaintiff. The Respondent/Plaintiff has filed the suit for grant of perpetual injunction seeking to restrain the Defendants and their agents from interfering with the peaceful possession and enjoyment of the residential house i.e., the suit schedule property by the Plaintiff.

4. The Petitioners herein, on receiving summons, filed their written statement and counter claim therein seeking for eviction of the Respondent/ Plaintiff. The Petitioners herein in their counter claim, in the suit filed by the Respondent/Plaintiff for injunction, had valued the suit for the relief of eviction and also paid the appropriate Court fee under the Telangana Court-Fees and Suit Valuation Act, 1956 (for short, 'the Act').

5. The Respondent/Plaintiff had filed his rejoinder and counter to the written statement and counter claim filed by the Petitioners/Defendants seeking eviction of the Respondent/Plaintiff.

6. The factum of Petitioners/Defendants being the owners of the scheduled property and the Respondent/Plaintiff is a tenant of the Petitioners/Defendants, is not in dispute.

7. The Petitioners/Defendants contend that on filing their written statement and counter claim, they had filed I.A.No.893 of 2021 under Order 15-A r/w Section 151 CPC before the trial Court to direct the Respondent/Plaintiff to deposit arrears of rent claimed in the counter claim and also to direct the Respondent/Plaintiff to continue to pay the monthly rents till the disposal of the main suit.

8. The Respondent/Plaintiff filed his counter to the said petition. The contention of the Respondent/Plaintiff is mainly that, in a suit for perpetual injunction a petition under Order 15-A r/w Section 151 of CPC is not maintainable.

9. The Court below, on consideration of the petition, counter and upon hearing the arguments of the counsel appearing for the parties, had framed the following point for determination of the Court.

"Whether the Petitioners/Defendants are entitled to direct the Respondent/Plaintiff to deposit the arrears simultaneously calling upon the Respondent to continue to pay the monthly rent till the disposal of the main suit as prayed for?"

10. The trial Court by referring to the provisions of Order 15-A of CPC concluded that in a suit filed by the Respondent/tenant for injunction simplicitor, the Petitioners/landlords cannot file a petition seeking arrears of rent as rightly contended by the Respondent. The trial Court also held that if the Petitioners/Defendants have a grievance of the Respondent/Plaintiff not paying rents, the remedy available is elsewhere. The trial Court placed reliance on the judgment rendered by the erstwhile combined High Court of Andhra Pradesh in the case of ***M.B. Chander and Ors. vs. Balakrishna Rao Charitable Trust***¹, wherein the Court had stated that in order to invoke Order 15-A of CPC, the conditions specified therein need to be fulfilled. The conditions specified in para No.16 of the above judgment are as under:

- “1. A suit must be for recovery of possession of property i.e., for eviction;
2. there must be a prayer for recovery of rent or compensation for the use and occupation;
3. the defendant/petitioner must plead no areas or arrears to be paid to landlord/plaintiff, which needs examination by court to decide what is admitted arrears of rent.”

¹ 2017 (3) ALD 68 : 2016 (0) SCJ Online (AP) 328

The trial Court, by applying the above conditions to the present suit, concluded that since the suit filed by the Respondent/Plaintiff is for perpetual injunction and not for eviction, the petition filed under Order 15-A (1) of CPC is not maintainable and accordingly, dismissed the petition.

11. However, a perusal of the impugned order would reveal that, the trial Court had not considered the fact of the Petitioners/Defendants filing a counter claim along with their written statement seeking eviction and recovery of arrears of rent against the Respondent/Plaintiff. The Petitioners/Defendants had also paid requisite Court fee thereon under the Act by valuing the counter claim as a suit for eviction. Moreover, the above said fact of the Petitioners/Defendants filing counter claim by paying appropriate Court fee along with their written statement is not in dispute.

12. The finding of the Court below that in a suit filed for perpetual injunction, petition under Order 15-A of CPC is not maintainable is factually incorrect and cannot be sustained, as in the present case the Petitioners/Defendants had also filed their counter-claim. A counter claim filed under Order 8 Rule 6 CPC has to be treated as a cross-suit for all practical purposes and the

Court has to adjudicate on both the main relief as well as the relief sought for in the counter-claim.

13. In the case of *Jag Mohan Chawla v. Dera Radha Swami Satsang*², the Supreme Court had held as under:

“The question, therefore is: whether in a suit for injunction, counter-claim for injunction in respect of the same or a different property is maintainable? Whether counter-claim can be made on different cause of action? It is true that preceding CPC Amendment Act, 1976, Rule 6 of Order 8 limited the remedy to set off or counter-claim laid in a written statement only in a money suit. By CPC Amendment Act, 1976, Rules 6A to 6G were brought on statute. Rule 6A(1) provides that 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 damage or not. A limitation put in entertaining the counter-claim is as provided in the proviso to Sub-rule (1). namely, the counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court. **Sub-rule (2) amplifies that 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. The plaintiff shall be given liberty to file a written statement to answer the counter-claim of the defendant within such period as may be fixed by the Court. The counter-claim is directed to be treated, by operation of Sub-rule (4) thereof, as a plaint governed by the rules of the pleadings of the plaint.** Even before

² (1996) 4 SCC 699

1976 Act was brought on statute this Court in *Laxmidas Dahyabhai Kabarwala v. Nanabhai Chunilal Kabarwala* [1964]2SCR567, had come to consider the case of suit and cross suit by way of counter-claim. Therein, suit was filed for enforcement of an agreement to the effect that partnership between the parties had been dissolved and the partners had arrived at a specific amount to be paid to the appellant in full satisfaction of the share of one of the partners in the partnership, and there by decree for settlement of accounts was sought. Therein the legal representatives of the deceased partner contended in the written statement, not only denying the settlement of accounts but also made a counter-claim in the written statement for the rendition of accounts against the appellant and paid the court fee as plaint. They also sought a prayer to treat the counter-claim as a cross suit. The trial Court dismissed the suit and the counter-claim. On appeal, the learned Single Judge accepted the counter-claim on a plaint in a cross suit and remitted the suit for trial in accordance with law. **On appeal, per majority this Court had accepted the respondents' plea in the written statement to be a counter-claim for settlement of their claim and defence in written statement as a cross suit. The counter-claim could be treated as a cross suit and it could be decided in the same suit without relegating the parties to a fresh suit. It is true that in money suits, decree must be conformable to Order 20, Rule 18, CPC but the object of the amendments introduced by Rules 6A to 6G are conferment of a statutory right to the defendant to set up a counter-claim independent of the claim on the basis of which the plaintiff laid the suit, on his own cause of action. In Sub-rule (1) of Rule 6A, the language is so couched with the words of wide width as to enable the parties to bring his own independent cause of action in respect of any claim that would be the subject matter of an independent suit. Thereby, it is no longer confined to money claim or to cause of action of the same nature as**

original action of the plaintiff. It need not relate to or be connected with the original cause of action or matter pleaded by the plaintiff. The words "any right or claim in respect of a cause of action accruing with the defendant" - would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. **The counter-claim expressly is treated as a cross suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protraction, the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit..."**

14. Thus, by the position of law enunciated as above, the counter claim filed by the Petitioners/Defendants would have to be treated as an independent suit for eviction. Once it is treated so, the Petitioners/Defendants would be entitled to file a petition under Order 15-A CPC for deposit of arrears of rent. Such a

petition is maintainable. However, the court below has not examined the issue in the above perspective. Further, the court below is required to apply the test to grant relief under Order 15-A CPC as held by this Court in *M.B. Chander's* Case (Supra 1) to the counter claim of the Petitioners/Defendants for recovery of arrears and eviction and not to the suit seeking perpetual injunction filed by the Respondent/Plaintiff.

15. Hence, this Court is of the view that the court below had erred in dismissing the petition filed by the Petitioners/Defendants on the ground that a petition for arrears of rent cannot be filed in suit for perpetual injunction. Thus, the impugned order passed by the trial court being erroneous cannot be sustained.

16. Accordingly, the Civil Revision Petition is allowed; the order dt.25.11.2022 in I.A.No.893 of 2021 in O.S.No.457 of 2020 passed by the Court of II Additional Junior Civil Judge-cum-II Additional Metropolitan Magistrate at Malkajgiri is hereby set aside; and the matter is remitted back to the trial court for passing orders afresh in the petition filed by the Petitioners/Defendants under Order 15 A r/w Section 151 CPC by taking into consideration the counter claim filed by the Petitioners/Defendants as a cross suit for eviction in accordance with law. However, having regard to the

facts, the Court below is directed to dispose of the above IA within a period of two weeks from the date of receipt of a copy of this order. Parties are at liberty to file a copy of this order before the trial court for the aforesaid purpose.

17. Consequently, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

T. VINOD KUMAR, J

Date:08.02.2023

Note: L.R. copy to be marked.

B/o

GJ