

(8) For the foregoing discussion, this petition merits acceptance. The order of the learned Additional District Judge is set aside and that of the trial Court restored, but without any order as to costs.

N.K.S.

Before R. N. Mittal, J.

BANK OF BARODA,—Petitioner.

versus

GURCHARAN SINGH,—Respondent.

Civil Revision No. 1670 of 1985.

October 29, 1985.

Code of Civil Procedure (V of 1908)—Order 6 Rule 17 and Order 8 Rule 6-A—Suit instituted for recovery of money—Written Statement filed by the defendant in the suit—Application subsequently made by defendant praying for amendment of the written statement to set up a counter claim—Such application allowed by the court—Order of the court—Whether sustainable.

Held, that from a reading of Order 8 Rule 6-A of the Code of Civil Procedure, 1908 it is clear that the defendant can file the counter claim before delivering the defence or before the time limited for delivering the defence expires. This fact also has to be mentioned in the written statement. It is thus evident that the defendant can file the counter-claim before he files the written statement and cannot be allowed to do so by amending the written statement. The object of incorporating the provision for setting up the counter claim before the filing of the written statement appears to be, that the disposal of the suit may not be delayed. As such the application for amendment under order 6 Rule 17 of the Code of written statement can not be allowed and the order of the court is not sustainable.

(Para 4)

Petition under section 115 C.P.C. for revision of the order of the Court of Shri R. C. Jain, District Judge Gurgaon dated 25th January, 1985 allowing the defendant (appellant in the first Appellate Court) to amend the written statement and to make a counter claim under Order 8 Rule 6-A, Code of Civil Procedure.

J. S. Shahpuri, Advocate, for the Petitioner.

P. D. Shakir, Advocate, for the Respondent.

Bank of Baroda v. Gurcharan Singh (R. N. Mittal, J.)

JUDGMENT

Rajendra Nath Mittal, J. (Oral)

(1) This revision petition has been filed by the plaintiff (respondent in the first Appellate Court) against the order of the District Judge, Gurgaon, dated 25th January, 1985, allowing the defendant (appellant in the first Appellate Court) to amend the written statement and to make a counter claim under Order 8 Rule 6-A, Code of Civil Procedure.

(2) Briefly, the facts are that the plaintiff instituted a suit for recovery of Rs. 54,273 against the defendant, which was contested by it. Ultimately, the trial Court decreed the suit on 19th February, 1982. The defendant went up in appeal before the District Judge, Gurgaon. During the pendency of the appeal, the appellant made an application under Order 6 Rule 17 of the Code seeking amendment of the written statement. It was sought to be pleaded that the goods pledged by him were rusted while they were in custody of the Bank on account of its negligence. He, therefore, prayed that he be allowed to claim damages from the Bank by way of counter-claim. It was alleged that the fact came to his knowledge when Mr. M. L. Chopra P. W. 4 and Mr. J. P. Aggarwal P. W. 7, Managers of the Bank, made statements in the Court. The application was allowed by the first Appellate Court. Consequently, it accepted the appeal, set aside the judgment and decree of the trial Court and remanded the case for *de novo* trial, after allowing the defendant to amend the written statement. The Bank has come up in revision to this Court.

(3) Mr. Shahpuri, learned counsel for the petitioner, contends that the defendant-respondent could not be allowed to set up counter claim under Rule 6-A of Order 8 by amending the written statement as the counter claim could be set up prior to the submission of the written statement and not subsequent thereto.

(4) I have duly considered the argument and find substance in the submission of the learned counsel. In order to determine the question, it will be useful to read rules 6-A and 6-B which are as follows:—

“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 of 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 :

(2)

(3)

(4)

6-B. *Counter-claim to be stated.*—Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.”

From a reading of the rules, it is clear that the defendant can file the counter-claim before delivering his defence or before the time limited for delivering his defence expires. He has also to mention that fact in the written statement. It is thus evidence that the defendant can file the counter-claim before he files the written statement, and cannot be allowed to do so by amending the written statement. The object of incorporating the provision for setting-up the counter-claim before the filing of the written statement appears to be, that the disposal of the suit may not be delayed. In the present case, the defendant has been allowed to set-up a counter-claim even after the suit had been decreed against him, which, in my view, could not be done.

(5) For the aforesaid reasons, I accept the revision petition, set aside the impugned order and direct the Appellate Court to register the case at its original number and decide the matter in accordance with law. No order as to costs.

H.S.B.