

SMT. SHANTI RANI DAS DEWANJEE  
v.  
DINESH CHANDRA DAY (DEAD) BY LRS.

SEPTEMBER 18, 1997

[G.N. RAY AND G.B. PATTANAİK, JJ.]

*Code of Civil Procedure, 1908 :*

*Order VIII, Rule 6-A—Counter claim—Plea that after written statement had been filed, filing of counter claim was barred—Rejected by civil Court holding that even after filing the written statement such an application can be presented provided the cause of action for filing the counter claim had arisen before or after the institution of the suit and such cause of action had continued till the filing of the written statement—Held, the application under Order VIII, Rule 6A is not ex-facie barred—There is no reason to interfere with the impugned order.*

*Mahendra Kumar and Ors. v. State of Madhya Pradesh and Ors., [1987] 3 SCC 265, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2766 of 1987.

From the Judgment and Order dated 20.5.87 of the Calcutta High Court in C.O. No. 896 of 1986.

S.K. Bhattacharya, Pradeep Kumar and S.K. Bandhupadhya for the Appellant.

Shankar Ghosh, G.S. Chatterjee and Raja Chatterjee for the Respondents.

The following Order of the Court was delivered :

The short question that arises for decision in this appeal is whether the application filed under Order VIII Rule 6 A of the Code of Civil Procedure on 22.6.85 by the defendant-respondents in Civil Case No. 248/82 pending in the Court of learned Munsiff at Serampore was barred by the provision of Order VIII, Rule 6A of the Code of Civil Procedure. By the impugned order, it has been held that such application was not barred under Order VIII Rule 6 A

A of the Code of Civil Procedure because even after filing the written statement, such an application can be presented provided the cause of action for filing the counter claim had arisen before or after the institution of the said suit and such cause of action had continued till the filing of the written statement. It was sought to be contended by the appellant that once the written statement is filed, such application for counter-claim under Order VIII Rule 6 A is ex facie barred.

In our view, the impugned decision does not warrant interference. Such question was specifically raised before this Court in *Mahendra Kumar and Ors. v. State of Madhya Pradesh and Ors.*, [1987] 3 SCC 265. It has been held by this Court that right to file a counter claim under Order VIII Rule 6 A of the Code of Civil Procedure is referable to the date of accrual of the cause of action. If the cause of action had arisen before or after the filing of the suit, and such cause of action continued upto the date of filing written statement or extended date of filing written statement, such counter claim can be filed even after filing the written statement. The said Civil Case No. 248/82, in which the application under Order VIII Rule 6 A has been filed by the defendant respondents was instituted on 15.7.82 and the application under Order VIII Rule 6A was presented on 22.6.85. It cannot be held that the cause of action for the suit or counter claim was ex facie barred by limitation under the Limitation Act. It has been sought to be contended by the learned counsel for the appellant that in the instant case, the cause of action had arisen long before the institution of the said Civil Case No. 248/82 and, therefore, the suit and counter claim were barred under the Limitation Act. Such question was not raised before the Court below and, therefore, had not been gone into. It is, therefore, not necessary for this Court to decide the same because the question of limitation regarding the suit if raised will be decided after ascertaining the date of accrual of the cause of action on the basis of relevant materials to be placed on record. We are therefore, not expressing any opinion on the said contention sought to be raised by the learned counsel for the appellant, for the first time before this Court. As the application under Order VIII Rule 6A is not ex facie barred the impugned order cannot be held to be incorrect on the grounds urged before the Court below. We therefore find no reason to interfere with the impugned order. This appeal, therefore, fails and is dismissed without any order as to costs.

It appears that C.S. No. 178/80 and Civil Case 248/82 have been directed to be heard analogously before the Court of the learned Munsiff. Since both

the suits are pending for a long time, it is only desirable that both the suits should be disposed of as early as practicable preferably within a period of six months from the date of communication of order. We reasonably expect that the Trial Court would be alive to the urgency of the disposal of the suits expeditiously and will take all necessary steps in that regard. A

R.P.

Appeal dismissed. B