

CRP 486/2006
BEFORE
HON'BLE MR JUSTICE H N SHARMA
CRP No 486/2005
11.12.2006

BEFORE
THE HON'BLE MR JUSTICE H N SHARMA

Heard Mr BR Dey, learned counsel for the petitioner.

By filing this application under Article 227 of the Constitution of India, the petitioner has assailed the order dated 7.11.2006 passed by the learned Civil Judge (Junior Division) No 1, Karimganj, in TS No 97/04.

By the impugned order, the learned trial Court rejected the prayer of the petitioner to accept the counter claim filed in the suit. The related suit was filed in the year 2004. Summons having been served, the defendant petitioners appeared by filing written statements. The defendant petitioners stated to have filed a counter claim along with their written statements. After completion of pleadings, issues were framed. The defendant petitioners did not point out that a counter claim has been filed along with the written statement. The suit proceeded. The examination of witnesses of the plaintiff was over and they were cross-examined by the defendant petitioners and discharged. One DW was also examined, cross-examined and discharged. Thereafter the defendant petitioners prayed for acceptance of the counter claim filed in the suit. The said prayer was vehemently objected by the plaintiff, inter alia, on the ground that in the event of allowing the counter claim, the procedure of suit will have to be reverted back anti-clockwise and they would be seriously prejudiced. The learned trial Court considering the rival submissions made by the parties, rejected the prayer of the defendant petitioners.

In support of this petition, Mr Dey, learned counsel for the petitioners, has submitted that although the counter claim was filed along with the written statements in the year 2004, the learned trial Court rejected the same vide the impugned order dated 7.11.2006 only. According to the learned counsel, it is incumbent upon the learned trial court to pass appropriate order in the counter claim, itself. The materials available before me do not disclose that the defendant petitioners have at any point of time prior to passing of the impugned order pointed out or brought to the notice of the Court about the filing of the counter claim but they conveniently waited till the suit is proceeded to a considerable extent nearly completion. In the meantime one DW was also examined after closer of the evidence of the plaintiff side. The learned trial Court, in view of the aforesaid fact did not accept the counter claim so filed by the defendant petitioners.

A civil suit is to be proceeded with as per the provisions contained in the Civil Procedure Code and there are various stages in the suit going through which it ultimately culminated into a final judgment and decree. After crossing of one stage, it is not permissible to relegate back to such stage again. In the instant suit, the plaintiff has already closed their evidence by examining necessary witnesses by disclosing their defence and the defendant petitioners have also produced their witnesses and examined them by the plaintiff. There is no explanation as to why the defendant petitioners did not point out or referred to or draw the attention of the Court about the filing of the counter claim. In a civil suit it is for the parties to point out or to bring to the notice about the filing of the counter claim, if the same is not taken up by the court. The defendant petitioners have conveniently waited for a considerable period of more than two years and allowed the suit to proceed. The Apex court in a recently delivered judgment reported in (2006) AIR 1 SCW 6381 (Rohit Singh Vs State of Bihar, considering all aspect of such a belated claim has held, inter alia, that a counter claim, no doubt, could be filed even after written statement is filed, but that does not mean that a counter claim can be raised after issues are framed and the evidence is closed. If the defendant petitioners are allowed to press t

he counter claim at this stage, the plaintiff will certainly be prejudiced. In that view of the matter, the learned trial court. In my considered opinion, has rightly exercised its discretion not to accept the same at a belated stage. Accordingly, I do not consider it is a fit case for exercising the superintending jurisdiction of this Court to interfere with the impugned order. Consequently, this revision petition stands dismissed.

JUDGE

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