

Counter Claims in Civil Suits – A Study

By

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1.1. A Counter-claim is “a claim made by the defendant in a suit against the plaintiff”.¹ It can be stated as follows:-

- 1) It is an independent claim
- 2) It is separable from the plaintiff’s claim, and
- 3) It is enforceable by a cross-action in favour of the defendant

1.2. Before 1976, there was no provision regarding the counter-claim in the Code of Civil Procedure.² In order to prevent multiplicity of proceedings, the Law Commission of India³ favoured the conceding of a right to make a counter claim to the defendant. This right was in addition to a counter-claim in the same suit. Counter-claim result in the following advantages:-

- i) Saving the time of the courts, particularly in the context of huge pendency of cases over a long period of time;
- ii) Eliminate the inconvenience of the parties to filing fresh litigation, on the issues which could be well-resolved in the present suit itself;

This would also result in the avoidance of multiplicity of proceedings and

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¹ P.R.Iyer, ‘Advanced Law Laxicon (2005) Vol 1 at P.1093.

² Hereinafter referred to as CPC throughout this study.

³ See 24th Report of the Law Commission at Page 150-151.

iii) Help in the early disposal of cases which otherwise, would have been inordinately delayed.

1.3. In view of the weighty reasons that prevailed with the then Govt., an Amendment Act of 1976 to CPC made a provision for counter-claims.⁴ Such a counter-claim may defeat the relief sought by the plaintiff and thus this can be viewed as a “cross-action”.⁵ Another factor that weighed with the Government in enacting the Amendment of 1976 was the ruling of the apex court⁶ that right to make a counter-claim be made statutory. Though the Government acted after a lapse of 12 years for acting on the ruling of the apex court,⁷ it has served a landable purpose in achieving the objectives such as avoidance of multiplicity of proceedings and to expedite the course of justice and give justice to both the parties to the suit, though the counter-claims can be set up in respect of a claim for which the defendant can file a separate suit.⁸ The court, due to liberal construction, considered the counter claim as a plaint in a cross-suit and hear the original suit and counter claim together and

⁴ See the Amendment Act 1976 inserting Rules 6A to 6G in the CPC.

⁵ In Re Amichand Pyarelal (1977)79 Bom L.R. See also Jayanthilal’s case, AIR 1956 Pat 199.

⁶ In Re Laxmidas AIR 1964 SC P.11

⁷ Ibid.

⁸ Munshi Ram Vs. Radha Kishan, AIR 1975 Punjab P.113-114

give its decision, provided the counter-claim is property stamped.⁹

1.4. The specific provision made for counter-claims can be discussed in detail:-¹⁰

Rule 6A(1): This enables a defendant to set up by way of counter-claim against the claim of the plaintiff any right or claim in respect of action accruing to the defendant against the plaintiff either before or after filing of the suit but before the defendant has delivered his defence or before the time fixed for delivery of his defence has expired.

The following limitations are imposed on the defendant:

I) Counter-claim should not exceed the pecuniary limits of the jurisdiction.¹¹

- (i) this is due to the reason that the pecuniary jurisdiction cannot be ousted;
- (ii) the power of the court to try the suit already entertained cannot be taken away by accepting the counter-claim beyond the pecuniary jurisdiction;

⁹ See Note 6. See also Gurbhachan Vs. Bhog Singh, AIR 1996 SC P.1087.

¹⁰ See Note 4.

¹¹ The ambit of Rule 6-A(1) can be explained by allowing a counter-claim for possession in a suit for plaintiff for injunction.

- (iii) a counter-claim solely against co-defendants is not maintainable, though the defendant along with plaintiff may claim relief against the co-defendants in the case;¹²
- (iv) the defendant may set up a counter-claim against the plaintiff for a cause of action either before or after filing of the suit. However, such claim should not be barred by limitation.¹³

1.5. The effect of a counter-claim may be as follows:-

- i) it has the effect of a cross-suit and the court can pronounce a final Judgment both on the original claim and the counter-claim;¹⁴
- ii) the counter-claim of the defendant will be treated as a plaint;¹⁵
- iii) in answer to the counter-claim, the plaintiff has the right to file a written statement;¹⁶
- iv) the counter-claim will be decided on merits, even if plaintiff's suit is stayed, dismissed, discontinued or withdrawn;¹⁷

¹² Rohit Singh Vs. State of Bihar, AIR 2007 SC P.10.

¹³ Mahender Kumar Vs. State of MP, AIR 1987 SC P.1395.

¹⁴ For details See Rule-6-A (2)

¹⁵ See Rule 6-A (4)

¹⁶ See Rule 6-A (3)

¹⁷ See Rule 6-D

- v) the defendant's right to get a decree in respect of a counter-claim claimed in the written statement is in way effected by the suit of the plaintiff;¹⁸
- vi) in the event of the plaintiff not filing a reply to the counter-claim, the court may pronounce Judgment against the plaintiff in respect of such counter-claim or make such order in respect of counter-claim, as it thinks fit;¹⁹
- vii) counter-claim of the defendant shall be treated as a plaint²⁰ and the rules governing the plaints shall apply; and
- viii) reply filed by the plaintiff in answer to a counter-claim shall be treated as a written statement.

The rules applicable for the written statement shall apply to such replies;²¹

- ix) Counter-claim is substantially a cross-action;²²
- x) Counter-claim need not arise out of same transaction;²³
- xi) Counter-claim enables the defendant to enforce the claim against the plaintiff as an independent action;²⁴
- xii) In a counter-claim, the amount need not be recoverable on the date of the suit filed by the plaintiff but may be

¹⁸ See Rule 6-F

¹⁹ Rule 6-E.

²⁰ Rule 6 –A(4).

²¹ Rule 6-G.

²² See Note 1.

²³ See Note 8.

²⁴ Ibid.

recoverable on the date of the written statement. For this purpose the defendant may amend the written statement with the leave of the court;²⁵ and

xiii) When the defendant claims an excess amount then the suit amount of the plaintiff, the excess amount will be treated as a counter-claim and the rules relating to counter-claim shall apply to the excess amount claimed by the defendant than the suit amount claimed by plaintiff;²⁶

- 2.1. In conclusion, it may be stated that the Amendment CPC of 1976 conferred benefits on the courts as well as the parties.
- 2.2. The courts are enabled to avoid delay and to prevent multiplicity of suits.
- 2.3. The court are enabled to decide the claims of the plaintiff and defendants on the footing of equality and expeditiously.
- 2.4. The pecuniary jurisdiction of the courts and their power to try the case when the suit of the plaintiff was filed is protected as thus the course of justice remains unaffected.
- 2.5. Time-barred counter-claims cannot be entertained. This is to ensure that barred claims under Limitation Act shall not be

²⁵ Ramesh Chand Vs. Anil Punjwani, AIR 2003 SCP.2508.

²⁶ Anand Enterprises Vs. Syndicate Bank, AIR 1990 Kant P.175.

allowed and therefore the counter-claims are confined to really and legally enforceable rights.

- 2.6. The right of the defendant to secure his rights in a counter-claim is kept intact and in no way affected by the dismissal, withdrawal or otherwise of plaintiff's suit. In other words, counter-claims are treated as independent and separate claims.
- 2.7. Counter-claim should satisfy the rules relating to filing of plaint.
- 2.8. Plaintiff failing to file a reply to the counter-claims will be fatal as the court will decide the counter-claims on merits.²⁷
3. It is hoped that the courts will keep in mind the ruling of the apex as well as High Courts and more specially Rules 6A to G introduced on the basis of Amendment Act 1976, to ensure fair and substantial justice to the parties.

²⁷ See Note 15.