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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF APRIL, 2007

BEFORE

THE HON'BLE MR. JUSTICE H.N. NAGAMOHAN DAS

WRIT PETITION No. 12106/2005 C/w.

WRIT PETITION No. 13748/2005 (GM-CPC)

W.P. No. 12106/2005

Between :

INTERNATIONAL SOCIETY FOR
KRISHNA CONSCIOUSNESS (ISKCON)

A registered public trust,
Having its registered office at
Harekrishna Land, Juhu,
Mumbai-400 049,
Represented by its authorized signatory
Sri Dinesh Kocharekar
Also known as Sri Dayaram Das,
Son of Sri Vinayak Kochrekar
Aged about 40 years,
Camping at
Sripuram, Seshadripuram,
Bangalore-560 020.

... Petitioner

(By Sri.C.G.Gopalaswamy, Adv.)

And :

INTERNATIONAL SOCIETY FOR
KRISHNA CONSCIOUSNESS (ISKCON)
Claiming to be having its registered office at
ISKCON, Harekrishna Hill,
Chord Road, Bangalore-560 010,
Represented by its Secretary
Sri Stoka Krishna Dasa

... Respondent

(By Sri.S.K.V.Chalapathy, Sr.Counsel)

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W.P. No. 13748/2005

Between :

INTERNATIONAL SOCIETY FOR
KRISHNA CONSCIOUSNESS (ISKCON)
Having its registered office at
ISKCON, Harekrishna Hill,
Chord Road, Bangalore-560 010,
Represented by its Vice President
Sri Chanchalaathi Dasa

... Petitioner

(By Sri.S.K.V.Chalapathy, Sr.Counsel)

And :

INTERNATIONAL SOCIETY FOR KRISHNA
CONSCIOUS (ISKCON) A Regd. Public
Trust having its Regd. Office at
Harekrishna Land, Juhu,
Mumbai-400 049 represented
By its authorised signatory
Sri Jaya Pataka Swami.

... Respondent

(By Sri.C.G.Gopaldaswamy, Adv.)

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India with a prayer to set-aside/quash the order dated 3.1.2005 passed by the 27th Addl.City Civil Judge, Bangalore on I.A.No.20 in O.S.No.7934/2001 and etc.

These Writ Petitions having been heard and reserved for orders, this day, NAGAMOHAN DAS J., pronounced the following;

ORDER

These two writ petitions are filed against the order dated 03.01.2005 in O.S. No. 7934/2001 passed by the City Civil Judge,

Jm

Bangalore, partly allowing I.A. No. 20 filed under Order 8 Rule 6-C CPC and partly rejecting the same.

2. The petitioners in W.P.No.13748/05 are plaintiffs and the petitioners in W.P.No.12106/05 are the defendants. For the sake of convenience, parties are referred to as per their status before the Trial Court.

3. Plaintiffs filed O.S. No. 7934/2001 against the Defendants for declaration and permanent injunction. The Defendants filed written statement denying the claim of plaintiff and also made a counter claim. The counter claim of defendant in O.S. No. 7934/2001 reads as under:

1. For Permanent injunction restraining the Plaintiff, its office bearers, agents, workmen and any person claiming under or through it from interfering with the first defendant's possession, management and control of:
 - (i) its Bangalore Branch and Sri Radhakrishnan Temple, both situated at Hare Krishna Hill, 1st R Block, Rajajinagar, Bangalore – 560 010,
 - (ii) of the Properties described in schedules A TO C, document No. 4 and other annexures to the plaint,
 - (iii) every other property, whether movable or immovable, tangible or intangible, corporeal or incorporeal, claimed by the plaintiff in any form and in any forum under any context whatsoever including by alleging acquisition from the date of its alleged incorporation, Whether in



existence at the date of filing of the suit or acquired thereafter in it's alleged name or in any other name.,

- (iv) all trusts, organizations, programmes, projects and the like attached to, or operating from the premises of, Sri Radakrishna Temple, Haye Krishna Hill, Rajajinagar, Bangalore - 560 010, and Sri Krishna Balarama Temple at Mysore as well the properties thereof, and
- (v) any branch, property and the like that are alleged by the plaintiff to be existing in the state of Karnataka or elsewhere in India or claimed by it as belonging to it.

4. Before the trial Court the plaintiffs filed I.A. No. 20 under Order 8 Rule 6C CPC seeking exclusion of counter claim made by the defendants and to direct them to file separate and independent suit in respect of the counter claim. The trial Court after hearing both the parties passed the impugned order partly allowing I.A. No. 20. The defendants being aggrieved by partly allowing I.A. No. 20 filed W.P. No. 12106/2005. The plaintiffs being aggrieved by partly rejecting I.A. No. 20 filed W.P. No. 13748/2005.

5. Sri. C.G. Gopaldaswamy, learned counsel for defendants contend, that the trial Court committed an error in partly allowing I.A. No. 20 and partly rejecting the same. He contends, that scope of Rule 6-C of Order 8 CPC is to exclude the whole of the counter claim and not in part. The impugned order amounts to striking of pleading and therefore the same is



bad in law. The claim of plaintiffs and the counter claim of defendants are interrelated and in respect of the same institution, that is, ISKCON temple at Bangalore and as such the trial court ought to have rejected I.A.No.20. Reliance is placed on the following decisions.

- i) Jaga Mohan Chawla and another Vs. Dera Radha Swami Satsang and others, AIR 1996 SC 2222
- ii) Shantesh Gureddi Vs. Thayamma, 1998 (6) KLJ 409

6. Per contra, Sri. S.K.V. Chalapathy, learned Senior counsel for plaintiff justifies the impugned order. He contends, that the counter claim of defendants is vague, not definite and specific. There is no cause of action for the counter claim of the defendants. Reliance is placed on the following decisions.

- i) Volume 21 Chancery Division page, 802
- ii) Sahebrao Vithoba Pawar Vs. Bapurao Ravji Pawar, AIR 1985 Bombay 426

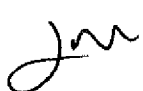
7. Heard arguments on both the side and perused the entire writ papers.

8. Prior to 1976 there was no law, statutory or otherwise permitting the courts to entertain the counter claims preferred by defendant in civil suits except in suits for recovery of money. Through judicial pronouncements, the courts held that there was no embargo for treating written statement or a part thereof as counter claim or as a cross suit. The



Parliament amended Order 8 CPC by Code of Civil Procedure (Amendment Act) 1976 and inserted Rule 6A to 6G. Rule 6G specifies that the defendant in a suit may in addition to his right of pleadings may set off and counter claim against the plaintiff. Rule 6C specifies that when a defendant sets up counter claim and plaintiff contends that the claim thereby raised ought not to be disposed of by way counter claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter claim, apply to the court for an order that such counter claim may be excluded, and the court may, on hearing of such application make such Order as it thinks fit.

9. In *Gray V. Webb* [Vol.21 Chancery Division, page 802], Order 22 Rule 9 identical to Order 8 Rule 6C CPC came up for consideration. In *Gray's* case Order 22 Rule 9 provides "where a defendant by his statement of defence sets up a counter claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent action, he may at any time before reply apply to the Court or a Judge for an order that such counter-claim be excluded, and the Court or a Judge may on the hearing of such application make such order as shall be just."



10. Order 22 Rule 9 in Gray's case is identical to Order 22 Rule 6C, Code of Civil Procedure (Amendment Act) 1976. Interpreting the above provision, the court held as under:

"Reading all these rules together I think that it is expedient to give a wide interpretation to Order XIX., rule 3, but by that and the other rules power is reserved to the Court to strike out any counter-claim which may be inconvenient, for example, such counter-claim as might cause an undue delay in the trial of the action.

In the present case the Defendant is in possession as purchaser of freehold land from the plaintiff who asks for the specific performance of the contract. That is practically a claim for money now due, and to this action there is really no defence. The defendant put in a counter-claim which was delivered on the 27th of May, 1882, and it alleges that in July, 1878, the Plaintiff carried on the business of a draper and agreed to sell to the Defendant his stock-in-trade, book-debts, and goodwill, and undertook to repay the amount if the book-debts got in should fall short of £300, and that a sum of £252 is payable under that agreement. The plaintiff asked for particulars of the counter-claim, which the Defendant has delivered. These particulars consist of a long statement of account. It must take a considerable time to verify these particulars of the counter-claim, and the sum claimed by the Plaintiff is £1400 while the Defendant by his counter-claim only claims £250. Now, under these circumstances, is it expedient, is it convenient that the trial of this action should be delayed by this counter-claim? It seems to me that it is not expedient, and I shall order the counter-claim to be excluded without prejudice to any action, but all costs already



occasioned by the counter-claim must be reserved until the trial of the action.”


11. Order 8 Rule 6C, CPC do not specify the circumstances or the grounds to exclude the counter claim. But the court to consider the exclusion of counter claim after hearing both the parties. In the hearing, if it is found that the counter claim might cause undue delay in the trial, inconvenience to the parties, the counter claim is vague and not specific, etc., then court may exclude the counter claim from the trial. In the instant case, the counter claim of the defendants contains two parts. The first part of the counter claim is in respect of suit properties. The second part of the counter claim is in respect of the properties, which are not the subject matter of the suit. The Trial Court is perfectly justified in allowing the counter claim to be in the written statement insofar as it relates to the subject matter of the suit. The impugned order partly rejecting I.A.No.20 and allowing defendants to continue their counter claim insofar as it relates to the suit properties is in the interest of both the parties and it prevents the multiplicity of proceedings. I find no justifiable grounds to interfere with the impugned order partly rejecting I.A.No.20 and therefore the writ petition filed by the plaintiffs is liable to be rejected.

12. The second part of the counter claim is in respect of the properties other than suit properties, other trusts, other schemes etc. The defendants have not specified in their counter claim, the details of other properties, trusts, schemes etc. In the second part of the counter claim of



the defendants, third party interest is involved and they are not made as parties. The second part of the counter claim is vague, not definite and not clear. In the absence of necessary and specific details, insofar as it relates to second part of the counter claim, it is not proper and convenient to try the same in the suit filed by the plaintiffs. The second part of the counter claim of defendants unduly delay the trial, causes inconvenience to the parties and therefore the trial court is justified in allowing I.A.No.20 in part excluding the second portion of the counter claim from the written statement. Therefore the writ petition filed by the defendants in W.P.No.12106/2005 is liable to be dismissed.

13. The decision relied on by the learned counsel for the petitioner in **Jaga Mohan Chawla V. Dera Radha Swami Satsang [AIR 1996 SC 2222]** has no application to the facts of the present case. In Jaga Mohan Chawla's case, the plaintiff filed a suit for injunction against the defendant. The defendant claimed injunction against the plaintiff in respect of another property. The Trial Court rejected the application filed by the plaintiff under Order 8 Rule 6C CPC. In revision the High Court while dismissing the revision, directed the Trial Court to decide as an issue, whether property in dispute is the same which is the subject matter of the counter-claim and to dispose of the suit after recording findings. The Supreme Court dismissed the Civil Appeal and continued the order of High Court. Therefore the decision in Jaga Mohan Chawla's case has no application to the facts of this case.



For the reasons stated above, both the petitions are dismissed with
no order as to costs.

Sd/-
Judge

LRS/DKB.