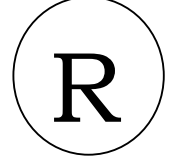




**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**DATED THIS THE 12<sup>TH</sup> DAY OF JUNE, 2025**  
**BEFORE**  
**THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**  
**WRIT PETITION NO.2867/2020 (GM-CPC)**



**BETWEEN:**

ABDUL SATTAR  
W/O LATE IBRAHIM  
AGED ABOUT 52 YEARS  
RESIDENT OF DOOR NO.25-26-2033/2  
BADIYA MANZIL, NEAR II BRIDGE  
JEPPU, MANGALORE  
D.K. DISTRICT 575002.

...PETITIONER

(BY SRI. RAVISHANKAR SHASTRY G, ADV.,)

**AND:**

1. M. KHALID  
S/O ISMAIL SHEIKH  
AGED ABOUT 72 YEARS.

SINCE DECEASED REP. BY LRS

1(a) MOHAMED HASHIM  
AGED ABOUT 40 YEARS.

1(b) JAHIDA  
AGED ABOUT 36 YEARS.

1(c) RESHMA  
AGED ABOUT 32 YEARS.

1(d) ANWAR  
AGED ABOUT 30 YEARS.

1(e) SALAM  
AGED ABOUT 28 YEARS.





1(f) NASIMA  
AGED ABOUT 31 YEARS.

1(g) SHARIF  
AGED ABOUT 29 YEARS.

ALL ARE CHILDREN OF  
LATE M. KHALID  
R/AT. M/S. K K STEEL PROCESS  
NEAR II BRIDGE, JEPPU  
MANGALORE, D.K. DISTRICT-575002.

[AMENDED V.C.O. DTD:15.09.2023]

2. IMTIYAZ  
S/O M. KHALID  
AGED 42 YEARS  
R/AT M/S. K K STEEL PROCESS  
NEAR II BRIDGE, JEPPU, MANGALORE  
D.K. DISTRICT-575002.

3. THE CORPORATION OF CITY OF MANGALORE  
REPRESENTED BY ITS  
COMMISSIONER, LALBAGH  
MANGALORE, D.K. DISTRICT-575003.

...RESPONDENTS

(BY SRI. HAREESH BHANDARY, ADV., FOR R3 [ABSENT]  
R1(a) TO R1(g) ARE SERVED  
R2 SERVED)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE  
CONSTITUTION OF INDIA, PRAYING TO WRIT OF CERTIORARI  
SETTING ASIDE THE ORDER DATED 03.12.2019 ON I.A.NO.14 IN  
O.S.NO.504/2013 PASSED BY THE IV ADDL. CIVIL JUDGE AND JMFC,  
MANGALURU CERTIFIED COPY OF WHICH IS PRODUCED AT  
ANNEXURE-A & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN  
'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

**CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**



**ORAL ORDER**

This petition is filed seeking the following reliefs:

*i) Writ of Certiorari setting aside the order dated 03/12/2019 on IA No 14 in OS No 504/2013 passed by the IV Addl. Civil Judge & JMFC, Mangaluru certified copy of which is produced at Annexure A.*

*ii) Any other writ or directions to meet the interest of justice and equity.*

2. Sri.Ravishankar Shastry G., learned counsel appearing for the petitioner submits that the petitioner filed O.S.No.504/2013 against the respondents herein seeking relief of permanent mandatory injunction and in the said suit, belated application is filed seeking amendment of the written statement raising counterclaim against the petitioner which came to be allowed by the trial Court under the impugned order.

3. It is submitted that the trial Court has not considered the effect of Order 8 Rule 6A of CPC in allowing the application. It is further submitted that the counterclaim can be made in a pending suit along with written statement or within the time stipulated to file the



written statement. The time for filing a written statement is 90 days from the date of service of the summons. However, the trial Court allowed the application for amendment of the written statement and counterclaim after concluding the evidence of the petitioner and then the matter was posted finally for the defendants evidence. Such exercise taken by the trial Court is contrary to the law laid down by the Hon'ble Supreme Court in the case of ***Ashok Kumar Kalra v. Wing Commander Surendra Agnihotri and Others***<sup>1</sup>. Hence, he seeks to allow the petition by setting aside the impugned order and rejecting the application for amendment of written statement.

4. Though notice on legal heirs of respondent Nos.1 and 2 have been served, they remained absent.

5. Learned counsel for respondent No.3 submits that the dispute is purely between the petitioner and respondent Nos.1 & 2 and no relief is sought against

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<sup>1</sup> (2020) 2 SCC 394



respondent No.3. Hence, he seeks to pass appropriate orders.

6. I have heard the arguments of the learned counsel for the petitioner and perused the materials available on record.

7. The pleading and material available on record indicates that the petitioner filed O.S.No.504/2013 against the respondents herein seeking relief of mandatory injunction to remove illegal construction of compound wall on the western and northern side of the plaint schedule property and on failure of the defendant to do the same, direct the Court bailiff to carry out the same at the cost of defendants and further prohibitory injunction restraining defendant Nos.1 and 2 from creating any obstruction to the plaintiff for movement to the plaint schedule property. In the aforesaid suit, respondent Nos.1 and 2 have filed written statement on 26.08.2013 denying the assertion made in the plaint. The order sheet indicates that the



plaintiff examined himself as PW.1 and his evidence was concluded on 15.12.2015 and thereafter, the matter was posted for the defendants' evidence on 31.03.2016. The matter adjourned at the instance of defendants on several occasions. On 13.09.2019 the trial Court posted the matter for defendants' evidence as a last chance. The order sheet further indicates that on 20.09.2019, respondent Nos.1 and 2 filed an application in IA.No.14 under Order 6 Rule 17 r/w Section 151 of CPC seeking prayer to carry out amendment in the written statement and also sought the relief of counterclaim. Admittedly, the said application is filed by respondent Nos.1 and 2 raising counterclaim after more than 6 years from the date of filing of the written statement. Order 8 Rule 6A reads as under:

**Order 8 Rule 6-A:**

**"6-A. Counterclaim 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 counterclaim against the claim of the plaintiff, any right or 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 counterclaim is in the nature of a claim for damages or not:*

*Provided that such counterclaim shall not exceed the pecuniary limits of the jurisdiction of the court.*

*(2) Such counterclaim shall have the same effect as a cross-suit so as to enable the court to pronounce a final judgment in the same suit, both on the original claim and on the counterclaim.*

*(3) The plaintiff shall be at liberty to file a written statement in answer to the counterclaim of the defendant within such period as may be fixed by the court.*

*(4) The counterclaim shall be treated as a plaint and governed by the rules applicable to plaints."*

*[Emphasis supplied]*

8. The Hon'ble Supreme Court while interpreting Order 8 Rule 6A in the case of **Ashok Kumar Kalra** referred *supra* has held as under:

**"8.** *Having observed on nuances of procedural justice, we need to turn our attention to the Order 8 of the CPC, which deals with written statement, set-off and counterclaim. Rules 1 to 5 of Order 8 CPC deal with the written statement. This Order dealing with the written statement was amended extensively by the Code of Civil Procedure (Amendment) Act, 2002 (22 of 2002) (hereinafter referred to as "Act 22 of 2002"), whereby the defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence. In case he fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not*



*be later than ninety days from the date of service of summons.*

**18.** *As discussed by us in the preceding paragraphs, the whole purpose of the procedural law is to ensure that the legal process is made more effective in the process of delivering substantial justice. Particularly, the purpose of introducing Rule 6-A in Order 8 CPC is to avoid multiplicity of proceedings by driving the parties to file separate suit and see that the dispute between the parties is decided finally. If the provision is interpreted in such a way, to allow delayed filing of the counterclaim, the provision itself becomes redundant and the purpose for which the amendment is made will be defeated and ultimately it leads to flagrant miscarriage of justice. At the same time, there cannot be a rigid and hyper-technical approach that the provision stipulates that the counterclaim has to be filed along with the written statement and beyond that, the court has no power. The courts, taking into consideration the reasons stated in support of the counterclaim, should adopt a balanced approach keeping in mind the object behind the amendment and to subserve the ends of justice. There cannot be any hard and fast rule to say that in a particular time the counterclaim has to be filed, by curtailing the discretion conferred on the courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counterclaim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But however, we are of the considered opinion that the defendant cannot be permitted to file counterclaim after the issues are framed and after the suit has proceeded substantially. It would defeat the cause of justice and be detrimental to the principle of speedy justice as enshrined in the objects and reasons for the particular amendment to CPC.*

**20.** *We may note that any contrary interpretation would lead to unnecessary curtailment of the right of a defendant to file counterclaim. This Court needs to recognise the practical difficulties faced by the litigants*



*across the country. Attaining the laudable goal of speedy justice itself cannot be the only end, rather effective justice wherein adequate opportunity is provided to all the parties, need to be recognised as well (refer to Salem Advocate Bar Assn. case [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344 : AIR 2005 SC 3353] )."*

21. We sum up our findings, that Order 8 Rule 6-A CPC does not put an embargo on filing the counterclaim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. Having said so, this does not give absolute right to the defendant to file the counterclaim with substantive delay, even if the limitation period prescribed has not elapsed. The court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed. The court in such cases have the discretion to entertain filing of the counterclaim, after taking into consideration and evaluating inclusive factors provided below which are only illustrative, though not exhaustive:

- (i) Period of delay.
- (ii) Prescribed limitation period for the cause of action pleaded.
- (iii) Reason for the delay.
- (iv) Defendant's assertion of his right.
- (v) Similarity of cause of action between the main suit and the counterclaim.
- (vi) Cost of fresh litigation.
- (vii) Injustice and abuse of process.
- (viii) Prejudice to the opposite party.
- (ix) And facts and circumstances of each case.
- (x) In any case, not after framing of the issues.

*[Emphasis supplied]*

9. The aforesaid enunciation of law clearly indicates that the defendants in the suit can file a counterclaim and allowing such counterclaim is discretion



of the Court. However, the trial Court is required to consider various factors and some illustrative factors are enumerated at paragraph No.21 of the aforesaid judgment. The illustration 10 referred in the aforesaid judgment clearly indicates that in any case the counterclaim cannot be allowed to be raised after framing of the issues. The said judgment was rendered by the Hon'ble three Judges of the Supreme Court. One of the learned Hon'ble Judge has partly supplemented the reasons and recorded the finding at paragraph No.60. It would be useful to extract the same.

**60.** *Having considered the previous judgments of this Court on counterclaims, the language employed in the rules related thereto, as well as the intention of the legislature, I conclude that it is not mandatory for a counterclaim to be filed along with the written statement. The court, in its discretion, may allow a counterclaim to be filed after the filing of the written statement, in view of the considerations mentioned in the preceding paragraph. However, propriety requires that such discretion should ordinarily be exercised to allow the filing of a counterclaim till the framing of issues for trial. To this extent, I concur with the conclusion reached by my learned Brothers. However, for the reasons stated above, I am of the view that in exceptional circumstances, a counterclaim may be permitted to be filed after a written statement till the stage of commencement of recording of the evidence on behalf of the plaintiff.*

[Emphasis supplied]



10. The aforesaid supplemented reason of the Hon'ble Judge clearly indicates that the filing of the counterclaim can be allowed after filing of the written statement till the stage of commencement of recording of the evidence on behalf of the plaintiff. The enunciation of law by the Hon'ble Supreme Court in the aforesaid decision as per the majority view is very clear that the counterclaim cannot be allowed after framing of the issues.

11. In the case on hand, the records indicate that the counterclaim filed by respondent Nos.1 and 2 was allowed after closure of the evidence of the plaintiff and after more than six years from the date of filing of the written statement. Hence, applying the aforesaid decision, I am of the considered view that the petition deserves to be allowed. Rejection of the counterclaim of respondent Nos.1 and 2 will not preclude them from availing other



remedies, available to them under the law. Hence, the following:

**ORDER**

- i) Writ petition is allowed.
- ii) Impugned order dated 03.12.2019 passed on IA.No.14 in O.S.No.504/2013 passed by the IV Additional Civil Judge & JMFC, Mangaluru is set aside. Consequently IA.No.14 filed in OS.No.504/2013 by respondent Nos.1 and 2 stands rejected.

**Sd/-**  
**(VIJAYKUMAR A. PATIL)**  
**JUDGE**

ABK  
List No.: 1 Sl No.: 46