

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1780 of 2019

Saurabh Suman W/o Sri Rajendra Prasad Resident of village- Sikandarpur, P.s.- Mufassil, District- Nawada at present resident of Mohalla- Ram Nagar, Nawadah, P.s. and District- Nawadah

... ... Petitioner/s

Versus

1. Tutari Nonian W/o Tulasi Nonia Resident of Village- Budhaul Tola Jangal Beldari, P.s.- Nawada Town, District- Nawadah
- 2.1. Chhoti Devi, D/o of late Tulsi Noniya, Present Resident of Budhaul, Jangal Beldari, P.S.and District- Nawada.
- 2.2. Andhiya Devi, D/o of late Tulsi Noniya, Resident of Village-Jamuar Beldari, P.O. Tungi, District-Gaya.
- 2.3. Gori Devi, D/o of late Tulsi Noniya, Resident of Village- Tekha, Pharper, P.S. Ariyari, District-Sheikhpura.
- 2.4. Parwati Devi, D/o of late Tulsi Noniya, Resident of Ishua, Oriya Tal, P.S. Ghat Ko Sumbha, District- Shekhpura.
4. Mahbir Noniya S/o Late Karu Nonia Resident of Village- Budhaul Tola Jangal Beldari, P.s.- Nawada Town, District- Nawadah
5. Rajo Noniya S/o Late Karu Nonia Resident of Village- Budhaul Tola Jangal Beldari, P.s.- Nawada Town, District- Nawadah
6. Bhatani Noniyan D/o Karu Nonia w/o Mahadeo Noniya, Resident of Village- Budhaul Tola Jangal Beldari, P.s.- Nawada Town, District- Nawadah
7. Malo Noniyan D/o Karu Nonia W/o Kali Chatar, Resident of Village- Budhaul Tola Jangal Beldari, P.s.- Nawada Town, District- Nawadah
8. Pairuchauhan @ Jataha Chauhan S/o Late Eabulal Chauhan Resident of Village- Budhaul Tola Jangal Beldari, P.s.- Nawada Town, District- Nawadah
9. Surendar Kumar S/o Sri Ramkhelawan Prasad Resident of Mohalla- New Area, P.s.- Nawada Town, District- Nawada
10. Sanjay Kumar, Son of Saryu Yadav Resident of Managerbigha, P.S. and District- Nawadah.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate
		Mr. Rakesh Kumar, Advocate
		Mr. Prabhat Ranjan Singh, Advocate
For the Respondent/s	:	Mr. S.S. Dwivedi, Sr. Advocate
		Mr. Madhu Prasun, Advocate
		Mrs. Renu Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT



Date : 14-05-2025

The present petition has been filed against the order dated 17.09.2019 passed in Title Suit No. 170 of 2009 by the learned Civil Judge (Senior Division)-I, Nawada whereby and whereunder the application filed by the defendants/respondent no. 10 dated 02.08.2019 to set up counter claim has been allowed.

02. Briefly stated, the facts of the case are that plaintiff/petitioner filed Title Suit No. 170 of 2009 for declaration of his title over the suit land and none of the defendants have any right, title, interest and possession over the suit land seeking further relief to confirm the possession of the plaintiff over the suit land against defendant nos. 1-9 while holding that Revisional Survey entry with regard to the land was wrong, baseless and incorrect. The defendants/respondents appeared and filed their written statement. Another written statement was filed on 07.01.2016 which was accepted vide order dated 14.01.2016. Issues were framed and parties adduced their evidence. After closure of evidence, argument was concluded finally on 23.02.2017. The defendants while arguing the matter relied upon their first written statement and an objection was raised by the plaintiff/petitioner which was



allowed. Meanwhile defendants/respondents filed an application for transfer of the matter to another Court which was allowed vide order dated 22.03.2017. Meanwhile, defendant/respondent no. 9 filed a written application bearing CWJC No. 11295/2009 challenging the order dated 15.07.2009 passed by the District Magistrate, Nawada in Mutation Revision Case No. 57(R)/08/29(R)/2009 wherein this Court disposed of the writ application vide order dated 01.05.2015 observing that the title suit has been pending since 2009 and both the parties were directed to co-operate in disposal of the case and the learned trial court was directed to dispose of the matter without granting unnecessary adjournment to any of the parties and preferably within nine months. It further transpires that despite the orders of this Court dated 01.05.2015 and on conclusion of the arguments of the parties, the learned trial court did not dispose of the title suit. Thereafter, the defendants/respondent no. 10, the subsequent purchaser of a piece of disputed land vide registered sale deed dated 03.11.2016 executed after the closure of evidence by both the parties filed an application for becoming a party on 09.08.2018 which was allowed on 27.06.2019. Thereafter, the evidence on behalf of respondent no. 10 was also closed on 08.07.2019 and the date was fixed for final arguments.



On 02.08.2019, the respondent no. 10 filed a counter claim before the learned trial court. The learned trial court allowed the counter claim filed on 02.08.2019 by the defendant no. 10/respondent no. 10 under Order VIII Rule 6A of the Code of Civil Procedure (in short “the Code”) vide order dated 17.09.2019. The said order is under challenge before this Court.

03. Mr. J.S. Arora, learned senior counsel appearing on behalf of the petitioner submitted that the impugned order has been passed ignoring the facts and the law and the learned trial court has failed to apply its judicial mind and passed the impugned order which is contrary to the law. Mr. Arora submitted that it is the settled law that right, title and interest and the subsequent purchaser depends upon the fate of the suit which is being contested by the vendor. Accordingly, purchaser has got no independent right apart from the right which the vendor has got. The respondent no. 10 purchased the disputed land not only during the pendency of the suit but also after the evidence was adduced. Further at the time of filing of written statement, the respondent no. 10 did not make any counter claim though objections were raised by the petitioner, the same were not considered by the learned trial court. The learned trial court failed to understand the import of provision under Order VIII



Rule 6A of the Code. The provision for filing counter claim by the defendant have been provided under the statute by the Legislature to avoid multiplicity of judicial proceeding and to save the precious time of Courts. In the present matter, defendant nos. 1-9/respondent nos. 1-9 have not filed any counter claim. Defendant no. 10 appeared in the picture after 10 years from the date of filing of the suit on the basis of a sale deed executed in his favour after seven years from the date of filing of the suit and after conclusion of evidence of the parties. Though respondent no. 10 has become a defendant in the present suit but so far as his right to counter claim is concerned, dispute is between the plaintiff and the vendor of the defendant/respondent no. 10 but this fact was also not considered by the learned trial court. Mr. Arora further submitted that the learned trial court completely gave a go by to the settled position of law though it considered the authorities still it allowed the counter claim and the same was not even maintainable. Mr. Arora referred to the decision of the Hon'ble Supreme Court in the case of ***Mahesh Govindji Trivedi Vs. Bakul Maganlal Vyas*** reported in **(2023) 11 SCC 516** wherein the Division Bench of the Hon'ble Supreme Court referred to the three Judge Bench decision of the Hon'ble Supreme Court in the case of ***Ashok Kr. Kalra Vs. Surendra***



Agnihotri, reported in **(2020) 2 SCC 394** wherein it has been held that Order VIII Rule 6A 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. The Hon'ble Supreme Court further held that 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 and further held that the court has to take into consideration the outer limit for filing the counterclaim, which is pegged till the issues are framed.

Mr. Arora further submitted that moreover, the reliefs sought by the defendant/respondent no. 10 in his counter claim are all time barred with regard to registered sale deeds which ranges from 1967 till 21.01.2011. Thus, Mr. Arora submitted that impugned order could not be sustained and the same being an illegal order needs to be set aside by this Court.

04. Mr. S.S. Dwivedi, learned Senior Counsel appearing on behalf of the respondent no. 10, submitted that there is no infirmity in the impugned order and the said order is proper and valid. Respondent no. 10 purchased 20 ¼ decimal of suit land vide registered sale deed dated 03.11.2016 from defendant no. 8 for valuable consideration and subsequently



came in the physical possession over his purchased land. Thereafter, he applied for mutation and on his application his name was mutated in the receipt of the purchased portion of land and accordingly rent receipt was issued to him. Against the said mutation the plaintiff/petitioner preferred Mutation Appeal No. 69/2017 before the learned D.C.L.R., Nawada and thereafter, the respondent no. 10 got the knowledge of pending Title Suit No. 170/2009. Thereafter, the respondent no. 10 on 09.08.2018 filed an application under Order I Rule 10 and Section 151 of the Code for being impleaded as party. The application of the respondent no. 10 was allowed on 27.06.2019 with condition that respondent no. 10 has to file his written statement in 7 days and he has to conclude his evidence in 60 days. The said order of the learned trial court dated 27.06.2019 has remained unchallenged till date. In compliance of the said order, the respondent no. 10 filed his written statement on 04.07.2019 and started adducing his evidence and from 08.07.2019 till 08.08.2019, six witnesses were examined. During continuity of his evidence respondent no. 10 filed his application dated 02.08.2019 under Order VIII Rule 6A of the Code making his counter claim. Therefore in exceptional circumstances, the respondent no. 10 was compelled to file his



written statement as it was impossible for the respondent no. 10 to file his counter claim before settlement of issues. Mr. Dwivedi further submitted that the Court was faced with a situation wherein it has to see that the prejudice which was going to be caused would be greater to which party, the plaintiff/petitioner or to defendants/respondent no. 10.

05. Mr. Dwivedi referred to a decision of the Hon'ble Supreme Court in the case of ***Vijay Prakash Jarath vs. Tek Prakash Jarath*** reported in **(2016) 11 SCC 800**, wherein the Hon'ble Supreme Court allowed the filing of counter claim after two and a half years of framing of the issues on the ground that it has not been shown that any prejudice would be caused to the respondent-plaintiff before the trial court, if the counter-claim was to be adjudicated upon, along with the main suit and the Hon'ble Supreme Court further observed that no serious injustice or irreparable loss would be suffered by the respondent/plaintiff.

06. Mr. Dwivedi next submitted that if the respondent no. 10 is not allowed to bring his counter claim on record and the issues which are settled, are decided by the learned trial court, the same would act as *res judicata*. If issues are once decided, the next suit on the same ground would be barred by



res judicata. Mr. Dwivedi referred to the issues, 8, 9 and 10 to support his contention that if these issues are decided, the respondent no. 10 would be greatly prejudiced as principles of *res judicata* would come into play on these issues.

07. Mr. Dwivedi further submitted that by virtue of sale deed executed in his favour, respondent no. 10 is within his rights to protect his right, title, interest and possession over his purchased land. If the vendor of the respondent no. 10 has not made any counter claim, the same does not preclude the respondent no. 10 from making counter claim to avoid multiplicity of the suit especially when suit is pending for adjudication before a Court of competent jurisdiction. Mr. Dwivedi further submitted that the Hon'ble Supreme Court has clearly held that counter claim could be filed in three ways -

- I. By including it in the written statement.
- II. By way of amendment to the written statement.
- III. By way of subsequent pleadings

The respondent no. 10 has adopted the third recourse so his approach could not be faulted.

08. Mr. Dwivedi further submitted that the law is never static and the object is to render justice. Respondent no. 10 was initially not a party and subsequently when he was made



a defendant in the suit, he filed his written statement and adduced the evidence in compliance of orders of the learned trial court which allowed his impleadment. The respondent no. 10 complied the orders and for this reason, he was not able to file his counter claim at the time of filing of written statement or prior to settlement of issues. However, counter claim could be filed even at the stage of evidence and referred to ***Vijay Prakash Jarath***(Supra). Thus, Mr. Dwivedi submitted that in the peculiar facts and circumstances of this case it is incumbent that all the issues should be heard and disposed of by the same Court. There is no infirmity or illegality in the impugned order and the learned trial court, after hearing the parties has allowed the petition for counter claim on costs for the ends of justice with a reasoned order and hence the said order does not need any interference.

09. By way of reply, Mr. Arora submitted that defendant/respondent no. 8 is the vendor of respondent no. 10 and he had already filed his written statement. The respondent no. 10 purchased the suit property during the pendency of the suit and if the defendant no. 8 succeeds then only defendant no. 10 would succeed in this case. The respondent no. 10 filed the counter claim after adducing five witnesses and this was only to



delay the matter. He had already been knowing about the sale deeds which he has challenged by way of counter claim and in this manner he has challenged 14 sale deeds. Allowing the application for counter claim is in teeth of the decision of the Hon'ble Supreme Court in the case of ***Mahesh Govindji Trivedi*** (supra) and ***Ashok Kr. Kalra*** (supra). The respondent no. 10 could not be given such a long rope. Mr. Arora thus submitted that there is no scope for allowing the impugned order to be sustained.

10. Having regard to the submission of the parties and on perusal of record, the issue before this Court is that whether in the given circumstances, the learned trial court was justified in allowing the counter claim when the same was filed during the recording of evidence of defendants/respondent no. 10?

11. It would be advantageous to refer relevant provisions of law.

12. Order VIII Rule 6A and 9 of the Code reads as under:-

“6A. Counter-claim 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 counter-claim 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 counter-claim



is in the nature of a claim for damages or not: Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim 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 counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

9. Subsequent pleadings.

No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.”

13. The law with regard to counter claim has been considered in various decisions of the Hon'ble Supreme Court and the same are quite illuminating. The three Judges Bench of Hon'ble Supreme Court in the case of ***Ashok Kumar Kalra*** (supra) in paragraph 21 summed up its finding in the following manner:-

“....., 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.”

One of the Hon'ble Judges partly supplementing and partly dissenting further observed in paragraph nos. 31 and 60 as under:-

“**31.**From the foregoing discussion, it is clear that a counterclaim can be filed if two conditions are met: *first*, its cause of action complies with Order 8 Rule 6-A(1); and *second*, it is filed within the period specified under the Limitation Act. Clearly, by itself, Rule 6-A does not specifically require that a counterclaim has to be filed along with the written statement. In the absence of a particular mandate under this Rule, it is necessary to look to other provisions of CPC to determine whether a counterclaim can be filed after a written statement.

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.”

14. Prior to that in the case of ***Ramesh Chand Ardawatiya Vs. Anil Panjwani*** reported in **(2003)7SCC 350** the Hon’ble Supreme Court in paragraph no. 28 observed as under:-

“28. ... The purpose of the provision enabling filing of a counterclaim is to avoid multiplicity of judicial proceedings and save upon the court's time as also to exclude the inconvenience to the parties by enabling claims and counterclaims, that is, all disputes between the same parties being decided in the course of the same proceedings. *If the consequence of permitting a counterclaim either by way of amendment or by way of subsequent pleading would be prolonging of the trial, complicating the otherwise smooth flow of proceedings or causing a delay in the progress of the suit by forcing a retreat on the steps already taken by the court, the court would be justified in exercising its discretion not in favour of permitting a belated counterclaim.* The framers of the law never intended the pleading by way of counterclaim being utilised as an instrument for forcing upon a reopening of the trial or pushing back the progress of proceeding. *Generally speaking, a counterclaim not contained in the original written statement may be refused to be taken on record if the issues have already been framed and the case set down for trial, and more*



so when the trial has already commenced. ... A refusal on the part of the court to entertain a belated counterclaim may not prejudice the defendant because in spite of the counterclaim having been refused to be entertained he is always at liberty to file his own suit based on the cause of action for counterclaim.”

(emphasis supplied)

15. Thereafter, in the case of ***Rohit Singh Vs. State of Bihar*** reported in ***(2006) 12 SCC 734***, the Hon’ble Supreme Court considered the issue of filing of belated counter claims and held in paragraph 18 as under:-

“18. ... A counterclaim, no doubt, could be filed even after the written statement is filed, ***but that does not mean that a counterclaim can be raised after issues are framed and the evidence is closed.*** Therefore, the entertaining of the so-called counterclaim of Defendants 3 to 17 by the trial court, after the framing of issues for trial, was clearly illegal and without jurisdiction. On that short ground, the so-called counterclaim, filed by Defendants 3 to 17 has to be held to be not maintainable.”

(emphasis supplied)

16. In ***Vijay Prakash Jarath*** (supra), the Hon’ble Supreme Court discussed the procedure for filing of the counter claim and observed in paragraph nos. 8, 9 and 10 as under:-

“8. It is in these circumstances, that we advert to Order 8 Rule 6-A of the Code of Civil Procedure, which is being reproduced below:

“**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."

9. A perusal of sub-rule (1) of Rule 6-A of Order 8, leaves no room for any doubt, that the cause of action in respect of which a counterclaim can be filed, should accrue before the defendant has delivered his defence, namely, before the defendant has filed a written statement. The instant determination of ours is supported by the conclusions drawn in *Bollepanda P. Poonacha v. K.M. Madapa* [Bollepanda P. Poonachav.K.M. Madapa, (2008) 13 SCC 179], wherein this Court observed as under: (SCC p. 183, para 11)

"11. The provision of Order 8 Rule 6-A must be considered having regard to the aforementioned provisions. *A right to file counterclaim is an additional right. It may be filed in respect of any right or claim, the cause of action therefor, however, must accrue either before or after the filing of the suit but before the defendant has raised his defence.* The respondent in his application for amendment of written statement categorically raised the plea that the appellants had trespassed on the lands in question in the summer of 1998. Cause of action for filing the counterclaim inter alia was said to have arisen at that time. It was so explicitly stated in the said



application. The said application, in our opinion, was, thus, clearly not maintainable. The decision of *Ryaz Ahmed* [*Ryaz Ahmed v. Lalith Kumar Chopra*, 2007 SCC OnLine Kar 159 : ILR 2007 KAR 2489] is based on the decision of this Court in *Baldev Singh v. Manohar Singh* [*Baldev Singh v. Manohar Singh*, (2006) 6 SCC 498].”

(emphasis supplied)

It is not a matter of dispute in the present case, that cause of action for which the counterclaim was filed in the present case, arose before the respondent-plaintiff filed the suit (out of which these petitions/appeals have arisen). It is, therefore, apparent that the appellants before this Court were well within their right to file the counterclaim.

10.It is quite apparent from the factual position noticed hereinabove, that after the issues were framed on 18-10-1993, the counterclaim was filed by the appellants before this Court (i.e. by Defendants 3 and 4 before the trial court) almost two-and-a-half years after the framing of the issues. Having given our thoughtful consideration to the provisions relating to the filing of counterclaim, we are satisfied, that there was no justification whatsoever for the High Court to have declined, the appellant before this Court, from filing his counterclaim on 17-6-1996, specially because, it is not a matter of dispute that the cause of action, on the basis of which the counterclaim was filed by Defendants 3 and 4, accrued before their written statement was filed on 11-11-1992. In the present case, the respondent-plaintiff's evidence was still being recorded by the trial court, when the counterclaim was filed. It has also not been shown to us, that any prejudice would be caused to the respondent-plaintiff before the trial court, if the counterclaim was to be adjudicated upon, along with the main suit. We are of the view, that no serious injustice or irreparable loss (as expressed in para 15 of *Bollepanda P. Poonacha case* [*Bollepanda P. Poonacha v. K.M. Madapa*, (2008) 13 SCC 179]), would be suffered by the respondent-plaintiff in this case.”



17. In the recent decision of ***Mahesh Govindji Trivedi*** (supra) wherein referring to the case of ***Ashok Kumar Kalra*** (supra) in paragraph 30 and 31, the Hon'ble Division Bench recorded its finding in paragraph no. 32 which reads as under:-

“32. In a conspectus of the aforesaid and while proceeding on the fundamental principles that the rules of procedure are intended to subserve the cause of justice rather than to punish the parties in conduct of their case, we are clearly of the view that the counterclaim in question could not have been removed out of consideration merely because it was presented after a long time since after filing of the written statement.”

18. Now, the reading of the aforesaid decisions leaves no doubt in mind that the mandate of law is that ordinarily the counter claim should be filed along with the written statement and in certain cases even after settlement/framing of issues. However in exceptional circumstances, the filing of counter claim has been allowed even when the evidence of plaintiff was being recorded.

19. Coming back to the facts of the case, the petition of the respondent no. 10 dated 09.08.2018 for impleadment was allowed vide order dated 27.06.2019. Thereafter, the respondent no. 10 was directed to file his written statement within seven days and thereafter he was directed to adduce his evidence within 60 days. In these circumstances, the claim of respondent about why counter claim could not be filed earlier deserves



sympathetic consideration. The evidence of plaintiff was already closed and thereafter the respondent no. 10 appeared in the suit and it further transpires that he has been acting under the orders/directions of the learned trial court with regard to filing of the written statement and adducing the evidence thereafter he filed his petition for taking the counter claim on record dated 02.08.2019. While considering the prayer for taking the counter claim on record, the facts preceding to the event become quite relevant. So delay and stage of the trial are not the only factors for consideration. Even the Hon'ble Supreme Court in the case of *Vijay Prakash Jarath*(supra) allowed filing of the counter claim after two and half years of framing of issue and while evidence of plaintiff was being recorded.

20. Under the aforesaid circumstances, the counter claim filed by respondent no. 10 could be said to be belated but considering the plight of respondent no. 10, the same could not be declined for being taken on record as the same would amount to denying justice to respondent no. 10. Time and again, it has been held by the Hon'ble Supreme Court that procedural law is handmaiden of justice and should be used to further the cause of justice. But such provisions have been enacted by the Legislature to facilitate the administration of justice and could



not be simply sacrificed on some righteous notion of morality to deliver justice at any cost to one party without thinking whether the same could cause injustice to the other side. In the case of ***Sambhaji and Ors. Vs. Gangabai and Ors.*** reported in (2008) 17 SCC 117 as under :-

"The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in the Judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive..."

No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. ... A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. ...

Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. ".

Reliance could also be placed in the case of ***Ashok Kumar Kalra*** (supra) and paragraph 50 of which reads as under :

"50. It is well settled that procedural rules should not be interpreted so as to defeat justice, rather



than furthering it. This is because procedural law is not meant to serve as a tyrant against justice, but to act as a lubricant in its administration. Thus, when courts set out to do justice, they should not lose sight of the end goal amidst technicalities. In some cases, this means that rules that have traditionally been treated as mandatory, may be moulded so that their object and substantive justice is not obstructed. It would be apposite to remember that equity and justice should be the foremost considerations while construing procedural rules, without nullifying the object of the legislature in totality. Thus, rules under the Limitation Act which may allow for filing of a belated counterclaim up to a long period of time, should not be used to defeat the ends of justice.”

21. Thus, in the peculiar facts and circumstances of the present case, I have no hesitation in holding that the learned trial court has passed a proper order and there is no excess of jurisdiction and therefore, the impugned order dated 17.09.2019 is affirmed.

22. Accordingly, the present petition stands dismissed.

23. However, the learned trial court would give ample opportunity to the plaintiff/petitioner for rebuttal of the counter claim as permissible in accordance with law.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	AFR
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